MONTANA LEGISLATIVE HISTORY

Chapter 577 ~~19~~ 2001

Bill H 474 S _____ Original bill & history ✓ C

H. Committee on Fed. Reg. Energy & Tel. S. Committee on Energy & Telcom

H. Committee on Fed. Reg. Energy & Tel.			S. Committee on Energy & Telcom		
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Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 474

INTRODUCED BY P. SLITER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO ELECTRICAL ENERGY; ~~INCREASING THE WHOLESALE ENERGY TRANSACTION TAX; CREATING A WINDFALL PROFITS TAX; PROVIDING THAT A PORTION OF THE INCREASED TAX MUST BE USED FOR LOW-INCOME ENERGY ASSISTANCE; PROVIDING A TAX CREDIT FOR THE DEFAULT SUPPLIER;~~ ALLOWING CUSTOMERS WHO ELECTED AN ALTERNATIVE ELECTRICAL ENERGY SUPPLIER ~~A LIMITED~~ AN OPPORTUNITY TO RECEIVE ELECTRICAL ENERGY FROM THE DEFAULT SUPPLIER; PROVIDING THAT ELECTRICAL ENERGY PURCHASED FROM THE DEFAULT SUPPLIER BY A DEFAULT CUSTOMER MUST BE USED FOR A CONSUMPTIVE PURPOSE AND MAY NOT BE REMARKETED; ~~REQUIRING THE PUBLIC SERVICE COMMISSION TO TAKE THE TAX CREDIT FOR THE DEFAULT SUPPLIER INTO CONSIDERATION WHEN ESTABLISHING RATES FOR THE DEFAULT SUPPLIER; AUTHORIZING THE PUBLIC SERVICE COMMISSION TO USE THE PROCEEDS OF THE WINDFALL PROFITS TAX TO CONTRACT FOR THE PURCHASE OF ELECTRICAL ENERGY FOR SALE TO MONTANA CUSTOMERS ON BEHALF OF THE DEFAULT SUPPLIER;~~ AUTHORIZING THE BOARD OF INVESTMENTS TO INVEST IN NEW GENERATION PROJECTS THAT MEET CERTAIN CRITERIA; PROVIDING ELIGIBILITY CRITERIA FOR THE PROJECTS, INCLUDING LONG-TERM CONTRACTS WITH THE DEFAULT SUPPLIER OR A MONTANA INDUSTRY FOR THE PURCHASE OF THE ELECTRICAL ENERGY GENERATED BY THE PROJECTS; REQUIRING A PLEDGE OF THE CONTRACT PROCEEDS AS A REPAYMENT OPTION FOR THE INVESTMENTS; MAKING THE STATE A PARTY TO THE CONTRACT IN THE EVENT OF DEFAULT IN PAYMENT BY DEFAULT SUPPLIER; EXTENDING THE DURATION OF THE UNIVERSAL SYSTEM BENEFITS CHARGE; MODIFYING THE DEFAULT SUPPLIER LICENSING RULES; CREATING A CONSUMER ELECTRICITY SUPPORT PROGRAM; PROVIDING THAT AN ELECTRICITY BUYING COOPERATIVE MAY SERVE AS A SUPPLIER OR PROMOTER OF ALTERNATIVE ENERGY AND CONSERVATION PROGRAMS; DEFINING "ELECTRICITY SUPPLY COSTS"; CLARIFYING THE DEFINITION OF "UNIVERSAL SYSTEM BENEFITS PROGRAMS" TO INCLUDE IRRIGATED AGRICULTURE; PROVIDING FOR PROCEDURES FOR A TRANSITION TO CUSTOMER CHOICE; PROVIDING FOR THE DEFAULT SUPPLIER'S RECOVERY OF ELECTRICITY SUPPLY COSTS; REVISING THE UNIVERSAL SYSTEM BENEFITS PROGRAMS FUNDING LEVEL TO INCLUDE IRRIGATED AGRICULTURE; ESTABLISHING A MONTANA POWER AUTHORITY; ALLOWING THE AUTHORITY TO PURCHASE, CONSTRUCT, AND

OPERATE ELECTRICAL GENERATION FACILITIES OR ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS AND TO ENTER INTO JOINT VENTURES FOR THESE PURPOSES; AUTHORIZING THE BOARD OF EXAMINERS TO ISSUE REVENUE BONDS FOR THE MONTANA POWER AUTHORITY TO ACQUIRE ELECTRICAL GENERATION FACILITIES AND TO BUILD ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS; PROVIDING THAT THE PRINCIPAL AND INTEREST ON THE BONDS IS PAYABLE FROM THE SALE OF ELECTRICAL ENERGY FROM THE FACILITIES AND FROM ELECTRICAL ENERGY TRANSMISSION AND DISTRIBUTION CHARGES; AMENDING ~~SECTIONS 15-72-104, 15-72-106,~~ ~~SECTION~~ SECTIONS 17-7-502, 35-19-104, 69-8-103, 69-8-104, 69-8-201 ~~AND 69-8-416~~, 69-8-203, 69-8-210, 69-8-211, 69-8-402, 69-8-403, 69-8-412, AND 69-8-414, ~~69-8-211, AND 69-8-403,~~ MCA; REPEALING SECTIONS 35-19-103, 69-8-416, AND 69-8-417, MCA; AND PROVIDING ~~AN~~ EFFECTIVE ~~DATE~~ DATES ~~AND A TERMINATION DATE; AND PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN EFFECTIVE DATE; AND PROVIDING AN EFFECTIVE DATE~~."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~**Section 1.** Section 15-72-104, MCA, is amended to read:~~

~~**"15-72-104. Wholesale energy transaction tax -- rate of tax -- exemptions -- cost recovery.** (1) (a) Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity transmitted within the state as provided in this section. The tax is imposed at a rate of 0.015 0.5 cent per kilowatt-hour of electricity transmitted by a transmission services provider in the state.~~

~~(b) For electricity produced in the state for delivery outside of the state, the taxpayer is the person owning or operating the electrical generation facility producing the electricity. The transmission services provider shall collect the tax from the person based upon the kilowatt hours introduced onto transmission lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced by 5% to compensate for transmission line losses.~~

~~(c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a refund for overpayment of taxes pursuant to 15-72-116.~~

~~(d) For electricity produced outside the state for delivery inside the state, the taxpayer is the~~

~~distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.~~

~~(e) For electricity delivered to a distribution services provider that is a rural electric cooperative for delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter 8, part 3, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider that is attributable to customers that have opted for customer choice.~~

~~(f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.~~

~~(2) (a) If more than one transmission services provider transmits electricity, the last transmission services provider transmitting or delivering the electricity shall collect the tax.~~

~~(b) If the transmission services provider is an agency of the United States government, the distribution services provider receiving the electricity shall self-assess the tax subject to the provisions of this part.~~

~~(c) If an electrical generation facility located within the state produces electricity for sale inside and outside the state, sales within the state are considered to have come from electricity produced within the state for purposes of the tax imposed by this section.~~

~~(3) (a) Electricity transmitted through the state that is not produced or delivered in the state is exempt from the tax imposed by this section.~~

~~(b) Electricity produced in the state by an agency of the of the United States government for delivery outside of the state is exempt from the tax imposed by this section.~~

~~(c) Electricity delivered to a distribution services provider that is a municipal utility described in 69-8-103(5)(b) or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is exempt from the tax imposed by this section.~~

~~(d) Electricity delivered to a purchaser that receives its power directly from a transmission or distribution facility owned by an entity of the United States government on or before May 2, 1997, or electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.~~

~~[(c) Electricity delivered by a distribution services provider to a customer with loads of 1,000 kilowatts or greater that was first served by a public utility after December 31, 1996, is exempt from the tax imposed by this section, provided that the customer purchases the electricity pursuant to a contract or contracts that establish the purchase price or prices of electricity. The exemption allowed by this subsection (3)(c) does not apply to electricity purchased under a renewal or extension of an existing contract or existing contracts.]~~

~~(4) A distribution services provider is allowed to recover the tax imposed by this section and the administrative costs to comply with this part in its rates. [Bracketed language terminates January 1, 2003--sec. 40, Ch. 556, L. 1999.)"~~

~~**Section 2.** Section 15-72-106, MCA, is amended to read:~~

~~**"15-72-106. Collection of wholesale energy transaction tax -- disposition of revenue.** (1) A transmission services provider shall collect the tax imposed under 15-72-104 from the taxpayer and pay the tax collected to the department. If the transmission services provider collects a tax in excess of the tax imposed by 15-72-104, both the tax and the excess must be remitted to the department.~~

~~(2) A self-assessing distribution services provider is subject to the provisions of this part.~~

~~(3) [(a)] The~~ Except as provided in subsection (3)(b), the ~~wholesale energy transaction tax collected under this part must be deposited in the general fund.~~

~~(b) The department shall deposit 0.5% of the tax collected under this part in the low-income energy assistance fund provided for in 69-8-412(1)(b).~~"

~~NEW SECTION.~~ **Section 3. Default electricity supplier -- tax credit.** ~~(1) There is a credit against taxes otherwise due under this chapter from a licensed default supplier of electricity as provided for in 69-8-416. The amount of the credit is based upon the difference in the rate at which the default supplier purchases electricity after June 30, 2002, and the rate at which the default supplier purchased electricity for sale on June 30, 2002. The rate differential is multiplied by the amount of electricity purchased for sale in Montana to the customers of the default supplier.~~

~~(2) A credit may not be refunded if a taxpayer has a tax liability of less than the amount of the credit.~~

~~(3) The credit allowed under this section may be used as a carryback against taxes imposed under~~

~~this chapter and may be used as a carryforward against taxes imposed by this chapter for succeeding tax years. The entire amount of the credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.~~

~~NEW SECTION. **Section 1. Windfall profits tax.** (1) There is a tax imposed on the windfall profits derived from the sale of electrical energy generated in Montana. The tax rate is equal to 90% of the windfall profits.~~

~~(2) In order to calculate windfall profits, each entity selling electrical energy generated in Montana shall report to the department the total income from sales of electrical energy generated in Montana. The department shall subtract from the total income the total kilowatt hours generated times the base year price. The amount determined is the tax base for the windfall profits tax. The tax base times the tax rate is the amount of windfall profits tax due to the state.~~

~~(3) The base year price is calculated as 5 cents per kilowatt hour. The department shall adjust the base year price to account for inflation by multiplying the base year price by the inflation factor for the prior year. For purposes of this subsection, "inflation factor" has the meaning provided in 15-30-101.~~

~~(4) The proceeds of the windfall profits tax must be deposited in the state special revenue account provided for in [section 2].~~

~~(5) The department may request assistance from the public service commission in analyzing data necessary to calculate the windfall profits tax.~~

~~NEW SECTION. **Section 2. Windfall profits tax account -- use.** (1) There is a windfall profits tax account in the state special revenue fund. The proceeds of the tax collected pursuant to [section 1] must be deposited in the account.~~

~~(2) The money in the account may be used by the public service commission to contract for electrical energy for distribution to Montana customers on behalf of the default supplier provided for in 69-8-416 and to fund the low-income energy assistance program provided for in 69-8-412.~~

NEW SECTION. **Section 1. Purpose.** The purposes of [sections ~~3 through 7~~ 1 through 5] are to:

(1) create up to ~~250~~ 450 megawatts of electrical energy from new generation projects in Montana; and

(2) PERMIT THE PURCHASE OF UP TO 120 MEGAWATTS OF ELECTRICAL ENERGY FROM EXISTING QUALIFIED FACILITIES THAT ARE LOCATED IN MONTANA FOR THE PURPOSE OF PROVIDING CONSUMERS WITH LOW-COST, RELIABLE ELECTRICAL ENERGY.

NEW SECTION. **SECTION 2. DEFINITIONS.** AS USED IN [SECTIONS ~~3 THROUGH 7~~ 1 THROUGH 5], THE FOLLOWING DEFINITIONS APPLY:

(1) "DEFAULT SUPPLIER" HAS THE MEANING PROVIDED IN 69-8-103.

(2) "MONTANA INDUSTRY" MEANS A COMMERCIAL ENTERPRISE LOCATED WITHIN MONTANA THAT WOULD HAVE CONSUMED MORE THAN 5 MEGAWATTS OF ELECTRICAL ENERGY ON AN AVERAGE DURING THE LAST 12 MONTHS IF THE ENTERPRISE HAD NOT CLOSED DUE TO ELECTRICAL PRICES.

~~(2)~~(3) "QUALIFIED FACILITY" MEANS AN ELECTRICAL GENERATION FACILITY OWNED OR OPERATED BY AN EXEMPT WHOLESALE GENERATOR OR AN ENTITY CERTIFIED AS AN EXEMPT WHOLESALE GENERATOR PURSUANT TO SECTION 32 OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, 15 U.S.C. 79Z-5A, OR AS PROVIDED FOR IN 16 U.S.C. 796(17)(A).

NEW SECTION. **SECTION 3. QUALIFICATION DATE.** IN ORDER TO PARTICIPATE IN [SECTIONS ~~3 THROUGH 7~~ 1 THROUGH 5], A NEW GENERATION PROJECT MUST COMMENCE OR HAVE COMPLETED CONSTRUCTION BY JULY 1, 2003, OR BE AN EXISTING QUALIFIED FACILITY CHOOSING TO PARTICIPATE IN THE CONTRACT PORTION OF THE PROGRAM PROVIDED FOR IN ~~[SECTION 7]~~ [SECTION 5].

NEW SECTION. **SECTION 4. INVESTMENT CRITERIA.** (1) THE BOARD OF INVESTMENTS SHALL REVIEW APPLICATIONS FROM PROPOSED NEW ELECTRICAL GENERATION FACILITIES AND EXISTING QUALIFIED FACILITIES FOR IN-STATE INVESTMENTS PURSUANT TO TITLE 17, CHAPTER 6, PART 3. IN ORDER TO MAKE AN INVESTMENT IN A NEW ELECTRICAL GENERATION FACILITY OR AN EXISTING QUALIFIED FACILITY, THE BOARD SHALL DETERMINE THAT:

(A) THE PROJECT PROMOTES ECONOMIC DEVELOPMENT IN MONTANA AND CREATES OR MAINTAINS EMPLOYMENT OPPORTUNITIES IN MONTANA;

(B) THE CONSTRUCTION OF THE PROJECT WILL PROVIDE STABLE ELECTRICAL ENERGY RATES FOR MONTANANS WHO RELY ON THE DEFAULT SUPPLIER FOR ELECTRICAL ENERGY;

(C) THE PROJECT WILL MAINTAIN ENVIRONMENTAL QUALITY CONSISTENT WITH STATE AND FEDERAL STANDARDS; AND

(D) THE PROJECT POSSESSES LONG-TERM ECONOMIC PROSPECTS CONSISTENT WITH THE OBLIGATION TO PROVIDE ELECTRICAL ENERGY GENERATION CAPACITY AND ELECTRICAL ENERGY FOR THE TERM OF THE CONTRACTS AS REQUIRED IN ~~[SECTION 7]~~ [SECTION 5].

(2) A PROJECT SELECTED BY THE BOARD MUST BE COLLATERALIZED BY PAYMENTS FOR THE SALE OF THE ELECTRICITY PRODUCED BY THE PROJECT TO THE DEFAULT SUPPLIER OR A MONTANA INDUSTRY AT RATES NOT IN EXCESS OF 5 CENTS PER KILOWATT HOUR PLUS ANNUAL ESCALATIONS EQUAL TO THE INFLATION RATE. A PAYMENT MAY BE MADE FROM THE ASSETS OF THE STATE IF THE DEFAULT SUPPLIER OR ITS ASSIGNEE OR A MONTANA INDUSTRY FAILS TO PAY THE APPROVED PROJECT FOR ENERGY DELIVERED IN ORDER TO MAINTAIN THE SUPPLY OF ENERGY TO MONTANA. THE STATE MUST BE A PARTY TO THE CONTRACT AND MAY BRING A CAUSE OF ACTION AGAINST THE DEFAULT SUPPLIER OR A MONTANA INDUSTRY FOR NONPAYMENT.

NEW SECTION. **SECTION 5. TERM OF CONTRACT -- PLEDGE.** (1) A PROJECT IS NOT ELIGIBLE FOR AN INVESTMENT UNDER ~~[SECTION 6]~~ [SECTION 4] UNLESS THE APPLICANT HAS SIGNED AN ASSIGNABLE ELECTRICAL ENERGY SALES AGREEMENT WITH THE DEFAULT SUPPLIER OR ITS SUCCESSOR IN INTEREST OR WITH A MONTANA INDUSTRY FOR A TERM OF NOT LESS THAN 15 YEARS OR MORE THAN 25 YEARS.

(2) THE PROCEEDS OF THE CONTRACT MUST BE PLEDGED AS SECURITY FOR THE REPAYMENT OF THE INVESTMENT.

SECTION 6. SECTION 17-7-502, MCA, IS AMENDED TO READ:

"**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-31-702; 15-34-115; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319;

19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; [section 19]; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-222; 80-4-416; 80-11-518; 81-5-111; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; and pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005.)"

SECTION 7. SECTION 35-19-104, MCA, IS AMENDED TO READ:

"35-19-104. Permissible purpose of incorporation. A buying cooperative may be organized under this chapter only for the purpose of supplying electricity to small customers as ~~a default~~ an electrical energy supplier, pursuant to ~~69-8-403~~ Title 69, chapter 8, parts 1 through 5, or for serving as a supplier or promoter of alternative energy and conservation programs."

SECTION 8. SECTION 69-8-103, MCA, IS AMENDED TO READ:

"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases ~~electric~~ electrical energy, and takes title to ~~electric~~ electrical energy

as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of ~~electric~~ electrical energy but that does not take title to ~~electric~~ electrical energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

(8) "Default supplier" means a customer's distribution services provider ~~or a person that has received a default supplier license from the commission~~.

(9) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(10) "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

(11) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(12) (a) "Electricity supply costs" means actual costs of the electricity. Actual costs include fuel, ancillary service costs, transmission costs including congestion and losses, and any other costs directly related to the purchase of electricity and management of electricity costs or a related service.

(b) Revenue from the sale of surplus electricity must be deducted from the costs included under

subsection (12)(a). Total transmission costs are recoverable only once in electricity supply costs.

(c) The terms used in this subsection (12) must be construed according to industry standards.

~~(12)~~(13) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

~~(13)~~(14) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and of acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

~~(14)~~(15) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

~~(15)~~(16) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

~~(16)~~(17) "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

~~(17)~~(18) "Local governing body" means a local board of trustees of a rural electric cooperative.

~~(18)~~(19) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

~~(19)~~(20) "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the

applicable billing period.

~~(20)~~(21) "Net metering system" means a facility for the production of ~~electric~~ electrical energy that:

(a) uses as its fuel solar, wind, or hydropower;

(b) has a generating capacity of not more than 50 kilowatts;

(c) is located on the customer-generator's premises;

(d) operates in parallel with the distribution services provider's distribution facilities; and

(e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

~~(21)~~(22) "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's share of transition costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

~~(22)~~(23) "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electricity supply for all residential and commercial customers.

~~(23)~~(24) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

~~(24)~~(25) "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

~~(25)~~(26) "Small customer" means a residential customer or a small commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts of a public utility distribution services provider that has opened access on its distribution system pursuant to Title 35, chapter 19, or this chapter.

~~(26)~~(27) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that holder.

~~(27)~~(28) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds

issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

~~(28)~~(29) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

~~(29)~~(30) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

~~(30)~~(31) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

~~(31)~~(32) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, ~~2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice of electricity supplier~~ 2007.

~~(32)~~(33) "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to

all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

~~(33)~~(34) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

(35) "Transmission services provider" means a person controlling or operating transmission facilities.

~~(35)~~(36) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

~~(36)~~(37) "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) reducing energy costs of irrigated agriculture in Montana through conservation and efficiency measures;

~~(c)~~(d) renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;

~~(d)~~(e) research and development programs related to energy conservation and renewables;

~~(e)~~(f) market transformation designed to encourage competitive markets for public purpose programs; and

~~(f)~~(g) low-income energy assistance.

~~(37)~~(38) "Utility" means any public utility or cooperative utility."

SECTION 9. SECTION 69-8-104, MCA, IS AMENDED TO READ:

"69-8-104. Pilot programs. (1) Except as provided in ~~69-8-201(4)~~ 69-8-201(5) and 69-8-311, beginning July 1, 1998, utilities shall conduct pilot programs using a representative sample of their

residential and small commercial customers. A report describing and analyzing the results of the pilot programs must be submitted to the commission and the transition advisory committee established in 69-8-501 on or before July 1, 2000.

(2) Utilities shall use pilot programs to gather necessary information to determine the most effective and timely options for providing customer choice. Necessary information includes but is not limited to:

(a) the level of demand for electricity supply choice and the availability of market prices for smaller customers;

(b) the best means to encourage and support the development of sufficient markets and bargaining power for the benefit of smaller customers;

(c) the electricity suppliers' interest in serving smaller customers and the opportunities in providing service to smaller customers; and

(d) experience in the broad range of technical and administrative support matters involved in designing and delivering unbundled retail services to smaller customers."

Section 10. Section 69-8-201, MCA, is amended to read:

"69-8-201. Public utility -- transition to customer choice -- waiver. (1) A public utility shall, except as provided in this section, adhere to the following deadlines:

(a) ~~On~~ Subject to subsection ~~(6)~~ (4), on or before July 1, 1998, all customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

(b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002, all other public utility customers must have the opportunity to choose an electricity supplier.

(2) ~~(a) Except as provided for in subsection (4), the commission may determine that additional time is necessary for customers identified in subsection (1)(b); however, the implementation of full customer choice may not be delayed beyond July 1, 2004.~~

~~(b)~~ A determination by the commission that additional time is necessary for subsection (1)(b) customers must be made at least 60 days in advance of the scheduled date and must be based on one or more of the following considerations:

~~(ii)~~(A) implementation would not be administratively feasible;

~~(iii)~~(B) implementation would materially affect the reliability of the electric system; or

~~(iiii)~~(C) Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive electricity supply market.

(3) The commission shall designate the public utility or one or more default suppliers to provide regulated default service for those ~~small~~ customers DESCRIBED IN SUBSECTIONS (1)(A) AND (1)(B) of a public utility that are not being served by a competitive electricity supplier and those customers who elect to receive service from the default supplier. ~~The transition advisory committee shall review and address the need for continued default supply service and make recommendation to the 57th legislature.~~ A customer who elects to receive service from the default supplier may only use the electricity for consumptive purposes and ~~must~~ SHALL enter into a contract with the default supplier that prohibits the customer from remarketing the electricity. A DISTRIBUTION SERVICES PROVIDER HAS AN ONGOING REGULATED DEFAULT SUPPLY OBLIGATION BEYOND THE END OF THE TRANSITION PERIOD.

(4) THE COMMISSION SHALL ESTABLISH PROCEDURES AND TERMS UNDER WHICH CUSTOMERS MAY CHOOSE AN ELECTRICITY SUPPLIER OTHER THAN THE DEFAULT SUPPLIER OR MAY CHOOSE TO BE SERVED BY THE DEFAULT SUPPLIER. THE CHOICE MUST BE AVAILABLE FOR THE PERIOD BEGINNING JULY 1, 2002. THE PROCEDURES MUST PROVIDE FOR AN ORDERLY PROCESS OF CHOICE DURING THE TRANSITION PERIOD AND PROVIDE CONDITIONS FOR LEAVING AND RETURNING TO THE DEFAULT SUPPLIER. THE PROCEDURES MUST TAKE INTO ACCOUNT ELECTRICITY SUPPLY CONTRACTS FOR SUPPLYING CUSTOMERS DURING THE TRANSITION PERIOD. THE PROCEDURES MUST PROVIDE FOR THE RECOVERY OF COSTS ASSOCIATED WITH THOSE CUSTOMERS WHO CHOOSE AN ALTERNATIVE ELECTRICITY SUPPLIER AND WHO WISH TO RETURN TO THE DEFAULT SUPPLIER.

~~(4)~~(5) Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may:

(a) defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory, except that the public utility shall file a transition plan pursuant to 69-8-202 to provide transition to customer choice on or before July 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and

(b) petition the commission to delay the public utility's transition plan filing until July 1, 2004.

~~(5)~~(6) Upon a request from a public utility with fewer than 50 customers, the commission shall

waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211, 69-8-402, and this section.

~~(6) A customer who chose an electricity supplier prior to July 1, 2001, may make an election prior to October 1, 2001 to receive its electricity from the default supplier. A customer who chose an electricity supplier prior to July 1, 2001, and who chooses to receive the customer's electricity from the default supplier pursuant to this subsection is bound by the election and may not again elect to choose an electricity supplier other than the default supplier.~~"

~~**SECTION 7.** SECTION 69-8-416, MCA, IS AMENDED TO READ:~~

~~"**69-8-416. Default supplier license.** (1) In developing licensing rules for default suppliers, the commission shall promote and facilitate the development of a competitive market for electricity supply.~~

~~(2) Default supplier licensing rules must ensure that:~~

~~(a) a default supplier may not purchase electricity for or sell electricity to commercial or industrial electric consumers having individual accounts with an average monthly demand in the previous calendar year of 100 kilowatts or more or to new commercial or industrial electric consumers having individual accounts with an estimated monthly demand of 100 kilowatts or more;~~

~~(b)~~[(A)] ~~a default supplier may not discount its commission-approved rates to retain or gain customers;~~

~~(c)~~[(B)] ~~a default supplier may not obligate customers to a contractual term or service;~~

~~(d)~~[(C)] ~~federal power marketing administration power or benefits acquired by a default supplier are distributed as widely and equitably as possible among small customers and in a manner that encourages competition;~~

~~(e)~~[(D)] ~~a default supplier, except when the default supplier is the distribution services provider, may not construct, purchase, take, receive, or otherwise acquire or own, hold, equip, maintain, or operate electric generating plants or transmission or distribution lines or systems, except that a default supplier may enter into transmission or distribution agreements for the lease or use of capacity on transmission and distribution systems owned by others to supply electricity to its customers in the state;~~

~~(f)~~[(E)] ~~a default supplier may not offer for sale any products other than electricity supply or provide electricity supply to members or customers other than those residing in the state or sell electricity or otherwise engage in the marketing of electricity on the wholesale market, but may dispose of excess~~

~~electricity associated with temporary load-energy imbalances.~~

~~(3) Except as provided in subsection (2)(c), a default supplier may provide only a single electricity supply service to all of its small customers. A default supplier may also offer an additional electricity supply service that includes a component of renewable energy.~~

~~(4) A default supplier may not offer other supply services unless the default supplier forms a separate entity."~~

SECTION 11. SECTION 69-8-203, MCA, IS AMENDED TO READ:

"69-8-203. Public utility -- customer choice ~~-- continued service~~ -- education of customers. (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines established in 69-8-201. Public utilities shall propose a method for customers to choose an electricity supplier.

~~(2) If a customer has not chosen an electricity supplier by the end of the transition period, a city, county, or consolidated government that is licensed as an electricity supplier may, upon application to and approval by the commission, become the default supplier to residential and commercial customers of a public utility within its jurisdiction. For customers that are not within the jurisdiction of a licensed and approved city, county, or consolidated government electricity supplier area, a public utility shall propose a method in the public utility's transition plans for assigning that customer to an electricity supplier. The commission shall establish an application process and guidelines for the designation of one or more default suppliers for the distribution area of each public utility.~~

~~(3) A public utility may phase in customer choice to promote the orderly transition to a competitive market environment pursuant to the deadlines in 69-8-201.~~

~~(4)~~(2) Public utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This education process must give special emphasis to education efforts during the transition period."

SECTION 12. SECTION 69-8-210, MCA, IS AMENDED TO READ:

"69-8-210. Public utilities -- electricity supply. (1) On the effective date of a commission order implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its generation assets from the rate base.

~~(2) During the transition period, the commission may establish cost-based prices for electricity~~

~~supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.~~

~~(3)~~(2) ~~If~~ During the transition period, ~~is extended, then~~ the customers' distribution services provider, acting as the default supplier, shall:

(a) beginning July 1, 2002, extend any cost-based contract with the distribution services provider's affiliate supplier for a term of not more than 3 years; or

(b) purchase electricity from the market; and

(c) use a mechanism that recovers electricity supply costs in rates ~~to ensure that those costs are fully recovered~~ as provided in subsection (4).

(3) (a) The default supplier shall provide for the full electricity supply requirements of all default supply customers. To meet these requirements, the default supplier shall procure a portfolio of electricity supply using industry-accepted procurement practices, which may include negotiated contracts or competitive bidding. The commission may develop reasonable requirements for the use of competitive bidding in the procurement process.

(b) A default supplier may submit material related to proposed bids or contracts concerning electricity supply to the commission before the default supplier enters into the contract. The commission may comment on the material.

(c) In reviewing electricity supply contracts, the commission shall consider only those facts that were known or should reasonably have been known by the default supplier at the time the contract was entered into and that would have materially affected the cost or reliability of the electricity supply to be procured.

(4) (a) The commission shall use an electricity cost recovery mechanism that ensures that all prudently incurred electricity supply costs are fully recoverable in rates. The cost recovery mechanism must provide for prospective rate adjustments for cost differences resulting from cost changes, load changes, and the time value of money on the differences.

(b) The default supplier shall submit a proposed electricity supply cost recovery mechanism to the commission for approval on or before July 1, 2001. A mechanism must be adopted by the commission before March 30, 2002.

(c) The commission shall establish a method to provide for the full recovery of electricity supply costs that extend beyond the end of the transition period.

~~(4)~~(5) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404.

(6) A public utility shall offer its customers an opportunity to purchase a separately marketed product composed of power from renewable resources. This product may be priced differently from the standard electricity product authorized in this section. For the purposes of this section, "renewable resources" means biomass, wind, solar, or geothermal resources."

SECTION 13. SECTION 69-8-211, MCA, IS AMENDED TO READ:

"69-8-211. Public utilities -- transition costs and charges -- rate moratorium. (1) Subject to the provisions of this section, the commission shall allow recovery of the following categories of transition costs:

(a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown costs, for which the contract price of generation is above the market price for generation;

(b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan, including costs, expenses, and reasonable fees related to issuing of transition bonds;

(c) the unmitigable transition costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to 69-8-202(3); and

(d) other transition costs as may qualify for recovery under this section.

(2) Transition costs as determined by the commission upon an affirmative showing by a public utility must meet the following requirements:

(a) Transition costs must reflect all reasonable mitigation by the public utility, including but not limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing through transition bonds.

(b) The value of all generation-related assets and liabilities and electricity supply costs must be reasonably demonstrable and must be considered on a net basis, and methods for determining value must include but are not limited to:

(i) estimating future market values of electricity and ancillary services provided by the assets;

(ii) appraisal by independent third-party professionals; or

(iii) a competitive bid sale.

(c) Investments and power purchase contracts must have been previously allowed in rates or, if not previously in rates, must be determined to be used and useful to ratepayers in connection with the commission's approval of the utility's transition plan.

(d) Unless otherwise provided for in this chapter, only costs related to existing investments and power purchase contracts identified in subsection (2)(c) and costs arising from those investments and power purchase contracts may be included as transition costs.

(3) (a) On commission approval of the amount of a public utility's transition costs, those costs must be recovered through the imposition of a transition charge.

(b) A transition charge may not be collected from customers for:

(i) new or additional loads of 1,000 kilowatts or greater that were first served by the public utility after December 31, 1996; or

(ii) loads served by that customer's own generation.

(c) Subject to commission approval, a utility and a customer may agree to alter the customer's transition charge payment schedule. Public utilities may file with the commission tariffs for electric service rates that foster economic development or retention of existing customers within the state, including generally available rate schedules. Transition charges are the only charges that may be imposed upon a customer class to recover transition costs under this section. A separate exit fee may not be charged.

(4) Transition charges must be imposed within a transition cost recovery period approved by the commission on a case-by-case basis. Except for transition costs recovered under subsection (1)(c), categories of transition costs may have varying transition cost recovery periods.

(5) Approval of transition costs and collection of those transition costs through transition charges is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition costs through any means not authorized by this chapter may not collect transition charges with respect to these transition costs.

(6) Except as provided in subsection (7), public utilities shall implement a rate moratorium ~~during the transition period as follows:~~

~~(a) From July 1, 1998, through June 30, 2000, public utilities may not charge rates higher than those rates in effect on July 1, 1998.~~

~~(b) From~~ from July 1, 2000, through June 30, 2002, ~~and~~ only for those customers subject to the provisions of 69-8-201(1)(b)~~,~~. During that period, public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. Beginning on July 1, 2000, public utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs.

(7) Excepted from the provisions of subsection (6) are:

(a) increased costs related to universal system benefits programs greater than those currently in rates, including the treatment of universal system benefits program costs as an expense;

(b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.

(c) subject to commission approval, an extraordinary event resulting in either:

(i) a 4% annual revenue requirement increase from July 1, 1998, through June 30, 2000; or

(ii) an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June 30, 2002;

(d) the increase or decrease in the annual state and local property tax expense that has occurred since May 2, 1997.

(8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.

(9) Public utilities shall apply savings resulting under 69-8-503 toward the rate moratorium pursuant to subsection (6).

(10) ~~During the 4-year transition period~~ Before July 1, 2002, public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings if electric earnings fall below 9.5% earned return on average equity. The public utility may include the flow through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits amortized under this subsection may not be reflected in operating income for ratemaking purposes.

(11) The commission shall issue the accounting orders necessary to align rate moratorium timing and requirements to actual transition bonds savings."

SECTION 14. SECTION 69-8-402, MCA, IS AMENDED TO READ:

"69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, energy conservation measures for irrigated agriculture, and low-income energy assistance during the transition period and into the future.

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives. Except as provided in subsection ~~(7)~~ (8), these universal system benefits charge rates must remain in effect until ~~July 1, 2003~~ December 31, 2005.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) Utilities must receive credit toward annual funding requirements for a utility's internal programs or activities that qualify as universal system benefits programs, including those portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, conservation and efficiency measures for irrigated agriculture, or low-income energy assistance, and for large customers' programs or activities as provided in subsection ~~(7)~~ (8). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility's distribution services provider at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer's distribution services provider shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for low-income related expenditures and conservation and efficiency measures for irrigated agriculture, the activity must have taken place in Montana.

(f) If a utility's or a large customer's credit for internal activities does not satisfy the annual

funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs, conservation and efficiency measures for irrigated agriculture, and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) Except for those utilities that have not filed a transition plan, a utility's minimum annual funding requirement for reducing energy costs through conservation and efficiency measures for irrigated agriculture is established at 6% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(b) A utility must receive credit toward the utility's irrigated agriculture assistance annual funding requirement for the utility's internal irrigated agriculture assistance programs or activities.

(c) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the irrigated agriculture energy assistance fund established in 69-8-412.

~~(7)~~(8) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's

qualifying load equal to the lesser of:

(A) $500,000, less the large customer credits provided for in this subsection ~~(7)~~ (8); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection ~~(7)~~ (8);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

~~(8)~~(9) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the transition advisory committee provided for in 69-8-501. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the transition advisory committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and to the transition advisory committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

~~(9)~~(10) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

~~(10)~~(11) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection ~~(10)(b)~~ (11)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."

SECTION 15. SECTION 69-8-403, MCA, IS AMENDED TO READ:

"69-8-403. Commission authority -- rulemaking authority. (1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission and distribution services within the state of Montana, as provided in this chapter, and may not regulate the price of electricity supply except as electricity supply may be procured as provided in this section:

(a) by one or more default suppliers for those customers not being served by a competitive supplier; or

(b) by the distribution function of a public utility for those customers that are not being served by a competitive electricity supplier as provided by commission rules. During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.

(2) The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.

(3) The commission shall license electricity suppliers and enforce licensing provisions pursuant to

69-8-404.

(4) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(5) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's transition plan.

(6) The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

(7) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

~~(8) The commission shall license default suppliers and enforce default licensing provisions pursuant to 69-8-416.~~

~~(9) The commission shall promulgate rules for the licensing of default suppliers on or before December 1, 1999.~~

(8) The commission shall establish electricity supply rates for individual customer classes, which may vary based on cost factors associated with classifications of service or customers and any other reasonable consideration. Collectively, the individual electricity supply rates must reflect the full level of electricity supply costs that the default supplier incurs on behalf of its customers.

~~(10)~~(9) Until the commission has determined that workable competition has developed for small customers, a default supplier's obligation to serve remains.

~~(11)~~(10) In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

~~(12)~~(11) This chapter does not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; or

(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter."

SECTION 16. SECTION 69-8-412, MCA, IS AMENDED TO READ:

"69-8-412. Funds established -- fund administrators designated -- purpose of funds -- department rulemaking authority to administer funds. (1) If, pursuant to 69-8-402(2)(f) or (5)(b), there is any positive difference between credits and the annual funding requirement, the department of revenue shall establish one or ~~both~~ all of the following funds:

(a) a fund to provide for universal system benefits programs other than low-income energy assistance. The department of environmental quality shall administer this fund.

(b) a fund to provide universal low-income energy assistance. The department of public health and human services shall administer this fund.

(c) a fund to provide for reductions in the energy costs of irrigated agriculture through energy conservation and efficiency measures. The department of agriculture shall administer this fund.

(2) The purpose of these funds is to fund universal system benefits programs.

(3) The department of environmental quality and the department of public health and human services may adopt rules that administer and expend the money in each respective fund based on an annual statewide funding assessment that identifies funding needs in universal system benefits programs. The annual assessment must take into account existing utility and large customer universal system benefits programs expenditures."

SECTION 17. SECTION 69-8-414, MCA, IS AMENDED TO READ:

"69-8-414. Universal system benefits programs credit review process. (1) All annual reports required pursuant to ~~69-8-402(8) and (10)~~ 69-8-402(9) and (11) must be filed with the department of revenue on March 1 of each year.

(2) Except as provided in 69-8-413, upon a challenge by an interested person, the department of revenue shall ensure that the credit claimed is consistent with this chapter. An interested person may file comments challenging the claim, including supporting documentation, with the department of revenue. A challenge of any claimed credit must be filed within 60 days of the department of revenue's receipt of the credit claimant's annual reports required pursuant to ~~69-8-402(8) and (10)~~ 69-8-402(9) and (11).

(3) Claimed credits are presumed to be correct unless challenged by an interested person. If a challenge is filed by an interested person, the department of revenue shall conduct an initial review of a challenged credit and shall make a determination as to the likelihood that the challenged credit qualifies

for universal system benefits programs. If the department of revenue finds that the challenged credit is not likely to qualify for universal system benefits programs, the department of revenue shall formally review the challenge; otherwise, the department of revenue shall dismiss the challenge and provide a statement of the reasons supporting dismissal of the challenge. The department of revenue may request additional information from the credit claimant or interested person. The department of revenue shall complete the initial review within 30 days of the challenge.

(4) If the department of revenue determines that a formal review of a challenged credit is necessary, the department of revenue shall provide public notice of the opportunity to comment to the credit claimant and interested persons. The department of revenue may also schedule an oral hearing. If a hearing is scheduled, the department of revenue shall provide public notice of the hearing to the credit claimant and interested persons.

(5) For a formal credit review challenge, the following procedures apply:

(a) The credit claimant shall provide documentation supporting the credit claimed to the department of revenue and to all interested persons, subject to department of revenue protective orders for confidential or sensitive materials, upon a showing of a privacy interest by the credit claimant.

(b) The department of revenue shall make all materials related to the claim, the challenge, and the submitted comments available to the credit claimant and for public inspection and photocopying, subject to any department of revenue protective orders.

(c) The credit claimant may respond in writing to any comments and other documents filed by an interested person.

(d) The department of revenue may ask for additional detailed information to implement this section.

(6) Upon completing a formal review of a challenged credit, the department of revenue shall make a decision to certify or to deny the credit claimed, providing a statement of the reasons supporting the department of revenue's decision. The formal review of a challenged credit, including the department of revenue's final decision, must be completed within 60 days of the department of revenue's public notice of the opportunity to comment on the challenged credit."

~~**Section 5.** Section 69-8-211, MCA, is amended to read:~~

~~"**69-8-211. Public utilities -- transition costs and charges -- rate moratorium.** (1) Subject to the~~

~~provisions of this section, the commission shall allow recovery of the following categories of transition costs:~~

~~(a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown costs, for which the contract price of generation is above the market price for generation;~~

~~(b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan, including costs, expenses, and reasonable fees related to issuing of transition bonds;~~

~~(c) the unmitigable transition costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to 69-8-202(3); and~~

~~(d) other transition costs as may qualify for recovery under this section.~~

~~(2) Transition costs as determined by the commission upon an affirmative showing by a public utility must meet the following requirements:~~

~~(a) Transition costs must reflect all reasonable mitigation by the public utility, including but not limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing through transition bonds.~~

~~(b) The value of all generation-related assets and liabilities and electricity supply costs must be reasonably demonstrable and must be considered on a net basis, and methods for determining value must include but are not limited to:~~

~~(i) estimating future market values of electricity and ancillary services provided by the assets;~~

~~(ii) appraisal by independent third-party professionals; or~~

~~(iii) a competitive bid sale.~~

~~(c) Investments and power purchase contracts must have been previously allowed in rates or, if not previously in rates, must be determined to be used and useful to ratepayers in connection with the commission's approval of the utility's transition plan.~~

~~(d) Unless otherwise provided for in this chapter, only costs related to existing investments and power purchase contracts identified in subsection (2)(c) and costs arising from those investments and power purchase contracts may be included as transition costs.~~

~~(3) (a) On commission approval of the amount of a public utility's transition costs, those costs~~

~~must be recovered through the imposition of a transition charge.~~

~~(b) A transition charge may not be collected from customers for:~~

~~(i) new or additional loads of 1,000 kilowatts or greater that were first served by the public utility after December 31, 1996; or~~

~~(ii) loads served by that customer's own generation.~~

~~(c) Subject to commission approval, a utility and a customer may agree to alter the customer's transition charge payment schedule. Public utilities may file with the commission tariffs for electric service rates that foster economic development or retention of existing customers within the state, including generally available rate schedules. Transition charges are the only charges that may be imposed upon a customer class to recover transition costs under this section. A separate exit fee may not be charged.~~

~~(4) Transition charges must be imposed within a transition cost recovery period approved by the commission on a case-by-case basis. Except for transition costs recovered under subsection (1)(c), categories of transition costs may have varying transition cost recovery periods.~~

~~(5) Approval of transition costs and collection of those transition costs through transition charges is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition costs through any means not authorized by this chapter may not collect transition charges with respect to these transition costs.~~

~~(6) Except as provided in subsection (7), public utilities shall implement a rate moratorium during the transition period as follows:~~

~~(a) From July 1, 1998, through June 30, 2000, public utilities may not charge rates higher than those rates in effect on July 1, 1998.~~

~~(b) From July 1, 2000, through~~ Through ~~June 30, 2002, and only for those customers subject to the provisions of 69-8-201(1)(b), public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. Beginning on July 1, 2000, public utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs.~~ In establishing rates for a licensed default supplier, the commission shall take into account the amount of the tax credit claimed under [section 3].

~~(7) Excepted from the provisions of subsection (6) are:~~

~~(a) increased costs related to universal system benefits programs greater than those currently in~~

~~rates, including the treatment of universal system benefits program costs as an expense;~~

~~(b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.~~

~~(c) subject to commission approval, an extraordinary event resulting in either:~~

~~(i) a 4% annual revenue requirement increase from July 1, 1998, through June 30, 2000, or~~

~~(ii) an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June 30, 2002;~~

~~(d) the increase or decrease in the annual state and local property tax expense that has occurred since May 2, 1997.~~

~~(8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.~~

~~(9) Public utilities shall apply savings resulting under 69-8-503 toward the rate moratorium pursuant to subsection (6).~~

~~(10) During the 4-year transition period, public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings if electric earnings fall below 9.5% earned return on average equity. The public utility may include the flow through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits amortized under this subsection may not be reflected in operating income for ratemaking purposes.~~

~~(11) The commission shall issue the accounting orders necessary to align rate moratorium timing and requirements to actual transition bonds savings."~~

~~**Section 6.** Section 69-8-403, MCA, is amended to read:~~

~~"**69-8-403. Commission authority -- rulemaking authority.** (1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission and distribution services within the state of Montana, as provided in this chapter, and may not regulate the price of electricity supply except as electricity supply may be procured~~

~~as provided in this section:~~

~~(a) by one or more default suppliers for those customers not being served by a competitive supplier; or~~

~~(b) by the distribution function of a public utility for those customers that are not being served by a competitive electricity supplier as provided by commission rules. During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.~~

~~(2) The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.~~

~~(3) The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.~~

~~(4) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.~~

~~(5) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's transition plan. In establishing rates for the default supplier, the commission shall take into account the amount of the tax credit provided for in [section 3].~~

~~(6) The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.~~

~~(7) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.~~

~~(8) The commission shall license default suppliers and enforce default licensing provisions pursuant to 69-8-416.~~

~~(9) The commission shall promulgate rules for the licensing of default suppliers on or before December 1, 1999.~~

~~(10) Until the commission has determined that workable competition has developed for small~~

~~customers, a default supplier's obligation to serve remains.~~

~~(11) In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.~~

~~(12) This chapter does not give the commission the authority to:~~

~~(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; or~~

~~(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter."~~

NEW SECTION. **SECTION 18. CONSUMER ELECTRICITY SUPPORT PROGRAM.** (1) THERE IS A CONSUMER ELECTRICITY SUPPORT PROGRAM. THE PURPOSE OF THE PROGRAM IS TO PROVIDE AN AFFORDABLE AND RELIABLE ELECTRICITY SUPPLY TO CUSTOMERS OF THE DEFAULT SUPPLIER FROM JULY 1, 2002, UNTIL JUNE 30, 2007. THE CONSUMER ELECTRICITY SUPPORT PROGRAM CONSISTS OF FINANCIAL SUPPORT OR THE ASSIGNMENT AND SUBSEQUENT DISPOSITION OF ELECTRICITY SUPPLY.

(2) THERE IS A CONSUMER ELECTRICITY SUPPORT ACCOUNT IN THE STATE SPECIAL REVENUE FUND. THE ACCOUNT MUST BE USED FOR THE DEPOSIT OF ANY OF THE FINANCIAL SOURCES DEDICATED TO THE ACCOUNT. DISTRIBUTIONS FROM THE ACCOUNT MUST BE IN ACCORDANCE WITH RULES ADOPTED BY THE DEPARTMENT OF ADMINISTRATION FOR THE PROGRAM. FINANCIAL SOURCES FOR FUNDING THE ACCOUNT MAY INCLUDE:

(A) ALLOCATIONS FROM THE STATE AS PROVIDED BY LAW; AND

(B) OTHER FINANCIAL SOURCES AS IDENTIFIED IN RULES ADOPTED BY THE DEPARTMENT OF ADMINISTRATION.

(3) ELECTRICITY SUPPLY MADE AVAILABLE FOR THE PROGRAM MUST BE EITHER DISPOSED OF, WITH THE RESULTING REVENUE DEPOSITED TO THE CONSUMER ELECTRICITY SUPPORT ACCOUNT, OR ASSIGNED TO THE DISTRIBUTION SERVICES PROVIDER TO SERVE DEFAULT SUPPLY CUSTOMERS. THE ELECTRICITY SUPPLY PROVIDERS MUST BE REIMBURSED FOR ELECTRICITY SUPPLY CONTRIBUTED AND USED IN ACCORDANCE WITH RULES ADOPTED BY THE DEPARTMENT OF ADMINISTRATION FOR THIS PROGRAM. ELECTRICITY SUPPLY SOURCES INCLUDE:

(A) ELECTRICITY PROVIDED BY ELECTRICITY SUPPLIERS;

(B) ELECTRICITY AVAILABLE IN THE ELECTRICAL ENERGY POOL ESTABLISHED IN [SECTION 1 OF HOUSE BILL NO. 645];

(C) GOVERNMENT POWER AUTHORITIES;

(D) QUALIFYING FACILITY ELECTRICITY SUPPLY AS PROVIDED BY LAW; AND

(E) ANY OTHER SOURCE OF ELECTRICITY SUPPLY AS IDENTIFIED IN RULES ADOPTED BY THE DEPARTMENT OF

ADMINISTRATION.

(4) THE CONSUMER ELECTRICITY SUPPORT PROGRAM MUST BE ADMINISTERED BY THE DEPARTMENT OF ADMINISTRATION. THE DEPARTMENT SHALL ADOPT RULES NECESSARY TO OPERATE THE PROGRAM AND TO ALLOCATE THE CONSUMER ELECTRICITY SUPPORT RESOURCES BEGINNING JULY 1, 2002. THE RULES MUST PROVIDE FOR THE EQUITABLE DISTRIBUTION OF PROGRAM RESOURCES FOR DEFAULT SUPPLY CUSTOMERS AND FOR THE REIMBURSEMENT OF THE ELECTRICITY SUPPLY PROVIDERS. THE RULES MUST BALANCE THE SHORT-TERM CONSIDERATIONS OF COST MITIGATION WITH THE LONGER-TERM INTERESTS OF ENCOURAGING CUSTOMER DEMAND RESPONSE BY ESTABLISHING ACCURATE ELECTRICITY SUPPLY PRICE SIGNALS. THE DEPARTMENT SHALL IMPLEMENT THE CONSUMER ELECTRICITY SUPPORT PROGRAM IN COORDINATION WITH THE DEFAULT SUPPLIER.

(5) THE DEPARTMENT OF ADMINISTRATION MAY RECOVER THE COSTS OF ADMINISTERING THE PROGRAM FROM THE CONSUMER ELECTRICITY SUPPORT ACCOUNT.

NEW SECTION. **SECTION 19. FUNDING OF CONSUMER ELECTRICITY SUPPORT PROGRAM.** (1) UP TO $100 MILLION EACH YEAR FROM THE REVENUE DERIVED FROM THE ELECTRICAL ENERGY EXCESS REVENUE TAX IMPOSED BY [SECTIONS 1 THROUGH 10 OF SENATE BILL NO. 512] MUST BE TRANSFERRED FROM THE GENERAL FUND INTO THE CONSUMER ELECTRICITY SUPPORT ACCOUNT.

(2) PURSUANT TO RULES ADOPTED BY THE DEPARTMENT OF ADMINISTRATION UNDER [SECTION 18], AT LEAST 80% OF THE MONEY IN THE ACCOUNT MUST BE USED TO PROMOTE PRICE STABILITY OF THE SUPPLY OF ELECTRICAL ENERGY IN MONTANA:

(A) FOR DEFAULT CUSTOMERS OF A PUBLIC UTILITY THAT HAS SUBMITTED A TRANSITION PLAN PURSUANT TO PARTS 1 THROUGH 5 OF THIS CHAPTER ON OR BEFORE JULY 1, 2001; AND

(B) FOR CUSTOMERS THAT CHOSE AN ELECTRICAL ENERGY SUPPLIER AS PROVIDED IN TITLE 69, CHAPTER 8, PART 2.

(3) PURSUANT TO RULES ADOPTED BY THE DEPARTMENT OF ADMINISTRATION UNDER [SECTION 18], THE AMOUNT REMAINING IN THE ACCOUNT AFTER PROMOTING PRICE STABILITY OF THE SUPPLY OF ELECTRICAL ENERGY UNDER SUBSECTION (2) OF THIS SECTION MAY BE USED FOR THE FOLLOWING PURPOSES:

(A) ASSISTING IN THE RECRUITMENT OF NEW EMPLOYERS WITH 100 EMPLOYEES OR MORE AND IN THE PROMOTION OF THE EXPANSION OF EMPLOYMENT BY 100 EMPLOYEES OR MORE BY EXISTING EMPLOYERS WHO NEED A REASONABLE AND STABLE SUPPLY OF ELECTRICAL ENERGY;

(B) FUNDING UNIVERSAL SYSTEM BENEFITS PROGRAMS PROVIDED FOR IN THIS CHAPTER;

(c) providing low-interest loans for new transmission facilities or for improvements to existing transmission facilities;

(d) providing low-interest loans for the construction of new temporary or permanent electrical generation facilities and for the expansion of the net generation capacity of existing electrical generation facilities. The electrical generation facilities referred to in this subsection must have an electrical generation capacity of 60 megawatts or less.

(4) In adopting rules, the department of administration shall consult with the commission and the consumer counsel. The department may contract with the commission for the administration of portions of the program.

(5) The funds deposited in the account under this section but not expended for the purposes established in this section must be transferred to the general fund after the end of each biennium.

(6) The money in the state special revenue account is statutorily appropriated, as provided in 17-7-502, for the purposes of [section 18] and this section.

NEW SECTION. **Section 20. Short title.** [Sections 20 through 28] may be cited as the "Montana Power Authority Act".

NEW SECTION. **Section 21. Purpose.** The legislature finds and declares that:

(1) the economic viability and security of the state of Montana is directly linked to reliable and affordable electrical energy;

(2) electrical energy has become a basic and irreplaceable necessity that impacts the public health, safety, and welfare of all Montana citizens;

(3) Montana's residential, agricultural, governmental, commercial, and industrial consumers of electrical energy are entitled to cost-based prices for electrical energy; and

(4) it is in the public interest that the Montana power authority have the ability to:

(a) purchase electrical energy from any supplier in the wholesale market for the purpose of providing reliable, cost-based power exclusively to Montana consumers;

(b) construct, acquire, or enter into joint ventures to construct or acquire electrical generation facilities that will provide cost-based power to consumers in Montana;

(c) construct, acquire, or enter into joint ventures to construct or acquire electrical energy

TRANSMISSION OR DISTRIBUTION SYSTEMS;

(D) SELL ELECTRICAL ENERGY TO A DEFAULT SUPPLIER AND TO ANY MUNICIPAL UTILITY, COOPERATIVE UTILITY, OR INVESTOR-OWNED UTILITY THAT SERVES MONTANA CUSTOMERS;

(E) CONTRACT WITH PUBLIC OR PRIVATE ENTITIES FOR THE OPERATION AND MAINTENANCE OF STATE-OWNED POWER FACILITIES; AND

(F) ENCOURAGE AND SUPPORT ENERGY CONSERVATION TO MITIGATE CONSUMER COSTS AND DETRIMENTAL IMPACTS ON THE ENVIRONMENT.

NEW SECTION. **SECTION 22. DEFINITIONS.** AS USED IN [SECTIONS 20 THROUGH 28], UNLESS THE CONTEXT REQUIRES OTHERWISE, THE FOLLOWING DEFINITIONS APPLY:

(1) "COST-BASED" MEANS THE PRICE CHARGED TO A DISTRIBUTION SERVICES PROVIDER THAT IS SUFFICIENT TO MEET THE OPERATING COSTS, INCLUDING COMMODITY COSTS, OF THE MONTANA POWER AUTHORITY AND TO ENSURE TIMELY REPAYMENT OF BONDS ISSUED ON BEHALF OF OR ANY OTHER DEBT INCURRED BY THE MONTANA POWER AUTHORITY.

(2) "DEFAULT SUPPLIER" MEANS A DISTRIBUTION SERVICES PROVIDER.

(3) "DEPARTMENT" MEANS THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ESTABLISHED IN 2-15-3301.

(4) "MONTANA POWER AUTHORITY" OR "AUTHORITY" MEANS THE CITIZEN BOARD ESTABLISHED IN [SECTION 23].

NEW SECTION. **SECTION 23. MONTANA POWER AUTHORITY -- BOARD COMPOSITION -- PROCEDURES.** (1) THERE IS A MONTANA POWER AUTHORITY CONSISTING OF A SEVEN-MEMBER CITIZEN BOARD APPOINTED BY THE GOVERNOR WITH THE CONSENT OF THE SENATE.

(2) IN SELECTING THE MEMBERS, THE GOVERNOR SHALL:

(A) CONSIDER EACH PROSPECTIVE MEMBER'S KNOWLEDGE AND UNDERSTANDING OF THE STRUCTURAL AND FINANCIAL DIMENSIONS OF THE ELECTRICAL ENERGY SECTOR OF THE STATE'S ECONOMY;

(B) ENSURE THAT TWO OF THE MEMBERS BROADLY REPRESENT, AS EVIDENCED BY THEIR BACKGROUND, EXPERIENCE, AND LIVELIHOOD, THE FOLLOWING CATEGORIES OF ELECTRICAL ENERGY CONSUMPTION:

(I) IRRIGATED AGRICULTURE;

(II) COMMERCIAL AND INDUSTRIAL ENTERPRISE; AND

(III) RESIDENTIAL;

(C) CHOOSE AN AT-LARGE MEMBER WITH ACADEMIC OR BUSINESS CREDENTIALS THAT INDICATE THAT THE PERSON HAS SUBSTANTIAL EXPERIENCE IN ENERGY MARKETS IN THE REGION OF THE WESTERN STATES; AND

(D) CHOOSE AN AT-LARGE MEMBER WITH SUBSTANTIAL EXPERIENCE IN FINANCIAL, BANKING, AND BONDING MATTERS.

(3) THE MEMBERS SHALL ELECT THE PRESIDING OFFICER BY MAJORITY VOTE.

(4) MEMBERS OF THE MONTANA POWER AUTHORITY SHALL SERVE STAGGERED 4-YEAR TERMS. THE GOVERNOR SHALL DESIGNATE TWO OF THE INITIAL MEMBERS TO SERVE 2-YEAR TERMS AND THREE OF THE INITIAL MEMBERS TO SERVE 3-YEAR TERMS. VACANCIES MUST BE FILLED BY APPOINTMENT FOR THE UNEXPIRED TERM. A MEMBER MAY NOT SERVE MORE THAN TWO CONSECUTIVE TERMS.

(5) THE MONTANA POWER AUTHORITY SHALL MEET AT LEAST TWICE A YEAR AND MAY MEET MORE FREQUENTLY AS REQUIRED BY CIRCUMSTANCES OR AT THE REQUEST OF ANY TWO OR MORE MEMBERS OF THE AUTHORITY.

(6) DECISIONS OF THE MONTANA POWER AUTHORITY REQUIRE A SIMPLE MAJORITY OF THE WHOLE MEMBERSHIP.

(7) THE MONTANA POWER AUTHORITY IS ATTACHED TO THE DEPARTMENT FOR ADMINISTRATIVE PURPOSES, AND THE DEPARTMENT SHALL PROVIDE STAFF SUPPORT AND A LIAISON BETWEEN THE AUTHORITY AND OTHER STATE OR FEDERAL AGENCIES.

NEW SECTION. **SECTION 24. POWERS AND DUTIES.** (1) THE MONTANA POWER AUTHORITY MAY:

(A) PURCHASE ELECTRICAL ENERGY FROM ANY WHOLESALE POWER SUPPLIER, ON A CONTRACTUAL BASIS, WITHOUT LIMITATION ON THE DURATION OF ANY CONTRACT, TO MEET THE AGGREGATED LOAD REQUIREMENTS OF CONSUMERS IN THE SERVICE TERRITORY OF A DISTRIBUTION SERVICES PROVIDER IN MONTANA;

(B) PURCHASE, CONSTRUCT, AND OPERATE ELECTRICAL GENERATION FACILITIES OR ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS IN THE STATE;

(C) ENTER INTO JOINT VENTURES WITH ANY MUNICIPALITY, A COOPERATIVE, AN INVESTOR-OWNED UTILITY, OR ANY OTHER PUBLIC OR LICENSED PRIVATE ENTITY IN MONTANA FOR THE PURPOSE OF FINANCING THE CONSTRUCTION OF AN ELECTRICAL GENERATION FACILITY OR AN ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEM;

(D) REQUEST THAT THE LEGISLATURE AUTHORIZE REVENUE BONDS TO BE ISSUED BY THE BOARD OF EXAMINERS PURSUANT TO TITLE 17, CHAPTER 5, FOR THE PURPOSE OF:

(I) CONSTRUCTING ELECTRICAL GENERATION FACILITIES OR ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS IN THE STATE; OR

(II) PURCHASING AN ELECTRICAL GENERATION FACILITY OR AN ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEM; OR

(E) SELL ELECTRICAL ENERGY TO ANY DISTRIBUTION SERVICES PROVIDER IN THE STATE;

(F) PARTICIPATE IN A REGIONAL TRANSMISSION ORGANIZATION ESTABLISHED IN RESPONSE TO OR IN COMPLIANCE WITH AN ORDER OF THE FEDERAL ENERGY REGULATORY COMMISSION; AND

(G) PARTICIPATE WITH ANY MUNICIPALITY IN AN ELECTRICAL ENERGY GENERATION PROJECT AS PROVIDED IN TITLE 90, CHAPTER 5, PART 1. THE BONDS MAY BE PUBLICLY OR PRIVATELY SOLD, BEAR INTEREST AT RATES AND TIMES, AND MATURE AT TIMES NOT EXCEEDING 40 YEARS FROM THE DATE OF ISSUANCE AS THE BOARD SHALL DETERMINE. THE BOARD MAY ISSUE THE BONDS PURSUANT TO A RESOLUTION OR INDENTURE OF TRUST WITH A FINANCIAL INSTITUTION HAVING THE POWERS OF A TRUST COMPANY. THE RESOLUTION OR INDENTURE MAY CONTAIN PROVISIONS FOR PROTECTING AND ENFORCING THE RIGHTS OF BONDHOLDERS THAT ARE REASONABLE AND PROPER AND NOT IN VIOLATION OF LAW, INCLUDING COVENANTS SETTING FORTH THE DUTIES OF THE STATE, THE BOARD OF EXAMINERS, THE AUTHORITY, OR AGENCIES OF THE STATE IN RELATION TO THE ACQUISITION, CONSTRUCTION, IMPROVEMENTS, MAINTENANCE, OPERATION, REPAIR, AND INSURANCE OF THE PROJECT FINANCED WITH THE PROCEEDS OF THE BONDS AND THE CUSTODY AND APPLICATION OF ALL MONEY. THE TRUST INDENTURE MAY SET FORTH THE RIGHTS AND REMEDIES OF THE BONDHOLDERS AS IS CUSTOMARY IN TRUST INDENTURES, DEEDS OF TRUST, AND MORTGAGES SECURING BONDS.

(2) THE MONTANA POWER AUTHORITY SHALL, SUBSEQUENT TO THE PURCHASE OF ELECTRICAL ENERGY FROM THE WHOLESALE MARKET OR THE GENERATION OF POWER FROM AN IN-STATE GENERATION FACILITY, OFFER COST-BASED ELECTRICAL ENERGY TO MONTANA CONSUMERS, INCLUDING TO A DEFAULT SUPPLIER AND TO ANY MUNICIPAL UTILITY, COOPERATIVE UTILITY, OR INVESTOR-OWNED UTILITY IN THE STATE.

NEW SECTION. **SECTION 25. BOND AUTHORIZATION.** (1) THE BOARD OF EXAMINERS MAY ISSUE AND SELL BONDS OF THE STATE IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $500 MILLION FOR THE PURPOSES AUTHORIZED IN [SECTION 26]. THE BONDS ARE REVENUE OBLIGATIONS IN WHICH THE NET REVENUE FROM THE SALE OF THE ELECTRICAL ENERGY PRODUCED FROM THE ELECTRICAL GENERATION FACILITIES ACQUIRED OR BUILT PURSUANT TO [SECTION 26] OR REVENUE FROM ELECTRICAL ENERGY TRANSMISSION AND DISTRIBUTION CHARGES IS PLEDGED FOR PAYMENT OF THE PRINCIPAL AND INTEREST ON THE BONDS. THE BOARD MAY ISSUE THE BONDS IN ACCORDANCE WITH THE APPLICABLE PROVISIONS CONTAINED IN 17-5-921 THROUGH 17-5-930.

(2) THE PROCEEDS OF THE BONDS, OTHER THAN ANY PREMIUMS AND ACCRUED INTEREST RECEIVED, MUST BE DEPOSITED IN AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND. PREMIUMS AND ACCRUED INTEREST MUST BE DEPOSITED

IN THE DEBT SERVICE FUND ESTABLISHED IN 17-2-102. PROCEEDS OF BONDS DEPOSITED IN THE ACCOUNT MAY BE USED TO PAY THE COSTS OF ISSUING THE BONDS AND TO FULFILL THE PURPOSES AUTHORIZED IN [SECTION 26]. FOR THE PURPOSES OF 17-5-803 AND 17-5-804, THE ACCOUNT CONSTITUTES A CAPITAL PROJECTS ACCOUNT. THE BOND PROCEEDS MUST BE AVAILABLE TO THE MONTANA POWER AUTHORITY AND MAY BE USED FOR THE PURPOSES AUTHORIZED IN THIS SECTION WITHOUT FURTHER BUDGETARY AUTHORIZATION.

(3) (A) IN AUTHORIZING THE SALE AND ISSUANCE OF THE BONDS, THE BOARD OF EXAMINERS, UPON REQUEST OF THE MONTANA POWER AUTHORITY, MAY CREATE SEPARATE ACCOUNTS OR SUBACCOUNTS TO PROVIDE FOR THE PAYMENT AND SECURITY OF THE BONDS, INCLUDING A DEBT SERVICE RESERVE ACCOUNT. THE NET REVENUE FROM THE SALE OF THE ELECTRICAL ENERGY PRODUCED FROM THE ELECTRICAL GENERATION FACILITIES ACQUIRED PURSUANT TO [SECTION 26] MUST BE PLEDGED TO THESE ACCOUNTS.

(B) THE ELECTRICAL ENERGY PRODUCED FROM THE ELECTRICAL GENERATION FACILITIES MUST BE OFFERED TO IN-STATE CUSTOMERS BEFORE THE ELECTRICAL ENERGY MAY BE OFFERED TO OTHER CUSTOMERS.

NEW SECTION. **SECTION 26. USE OF BOND PROCEEDS.** THE MONTANA POWER AUTHORITY SHALL USE THE PROCEEDS OF THE BONDS AUTHORIZED IN [SECTION 25] TO PURCHASE THE ELECTRICAL GENERATION FACILITIES AND ASSOCIATED WATER RIGHTS FOR THOSE FACILITIES, TO BUILD ELECTRICAL ENERGY GENERATION FACILITIES, TO DESIGN AND BUILD NEW STATE-OWNED ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS, OR TO PAY CAPITALIZED INTEREST DURING CONSTRUCTION, TO FUND A DEBT SERVICE RESERVE, AND TO PAY COSTS ASSOCIATED WITH THE SALE AND SECURITY OF THE BONDS. THE MONTANA POWER AUTHORITY MAY NOT ACQUIRE A FACILITY OR SYSTEM THAT IS ASSOCIATED WITH A SUPERFUND PROJECT.

NEW SECTION. **SECTION 27. INTERAGENCY COOPERATION.** (1) STATE AGENCIES SHALL COOPERATE WITH THE MONTANA POWER AUTHORITY IN THE PLANNING OF ELECTRICAL ENERGY PURCHASES OR THE PERMITTING OR CONSTRUCTING OF ELECTRICAL GENERATION FACILITIES.

(2) WITHIN THE LIMITS OF AVAILABLE RESOURCES, STATE AGENCIES SHALL PROVIDE SCIENTIFIC, ECONOMIC, AND OTHER RELEVANT DATA REQUESTED BY THE MONTANA POWER AUTHORITY.

NEW SECTION. **SECTION 28. PLEDGE.** IN ACCORDANCE WITH CONSTITUTIONS OF THE UNITED STATES AND THE STATE OF MONTANA, THE STATE PLEDGES THAT IT WILL NOT IN ANY WAY IMPAIR THE OBLIGATIONS OF ANY AGREEMENT BETWEEN THE STATE AND THE HOLDERS OF THE BONDS ISSUED BY THE STATE.

NEW SECTION. **Section 29. Adoption of rules.** Because the supply and price of electricity constitute a threat to the public health, safety, and welfare, the commission and the department of administration may begin proceedings to adopt rules immediately upon passage and approval of [this act]. The rules must be adopted by July 1, 2001.

NEW SECTION. **Section 30. Repealer.** Sections 35-19-103, 69-8-416, and 69-8-417, MCA, are repealed.

NEW SECTION. **Section 31. Codification instruction.** ~~(1) [Section 3 1] is intended to be codified as an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply to [section 3 1].~~

~~(2) [Section 2] is intended to be codified as an integral part of Title 69, chapter 8, and the provisions of Title 69, chapter 8, apply to [section 2].~~

~~(3) [Sections 3 through 7]~~ (1) [Sections 1 through 5] are intended to be codified as an integral part of Title 17, chapter 6, and the provisions of Title 17, chapter 6, apply to ~~[sections 3 through 7]~~ [Sections 1 through 5].

(2) [Sections 18 and 19] are intended to be codified as an integral part of Title 69, chapter 8, and the provisions of Title 69, chapter 8, apply to [sections 18 and 19].

(3) [Sections 20 through 28] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 20 through 28].

NEW SECTION. **Section 32. Effective ~~date~~ dates.** ~~[This act]~~ (1) Except as provided in subsection (2), [this act] is effective July 1, 2001.

(2) [Sections 29 and 31 and this section] are effective on passage and approval.

~~NEW SECTION. **Section 9. Termination.** [This act] terminates June 30, 2007.~~

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN AUBYN A. CURTISS**, on March 1, 2001 at 3:41 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:
Rep. Aubyn A. Curtiss, Chairman (R)
Rep. Tom Dell, Vice Chairman (D)
Rep. Douglas Mood, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Roy Brown (R)
Rep. Gary Forrester (D)
Rep. Carol C. Juneau (D)
Rep. Gary Matthews (D)
Rep. Joe McKenney (R)
Rep. Alan Olson (R)
Rep. Trudi Schmidt (D)
Rep. Bob Story (R)

Members Excused: None.

Members Absent: None.

Staff Present: Staci Leitgeb, Committee Secretary
Stephen Maly, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 474, 2/25/01

HEARING ON HB 474

Sponsor: **REP. PAUL SLITER, HD 76, Flathead Valley**

Proponents: **Gary Feland, PSC**
REP. DAVE GALLIK, HD 52
Rachel Haberman, Energy Share

Tom Daubert, Ashgrove Cement
Warren McConkey, Flathead Electric

Opponents: Jerome Anderson, PPL Montana
Dave Kinnard, PPL Montana
Ken Morrison, PPL Montana
John Alke, MDU
Tom Ebzery, Puget Sound Energy, Pacific Corp, Avista Corp, Portland General Electric
Jim Mockler, Montana Coal Council
Webb Brown, Montana Chamber of Commerce
Con Malee, Energy West Resources
Mary Whittinghill, Montana Tax Payers Association
Don Allen, Western Environmental Trade Association
Carl Nyman, Anaconda Project Facilitaters

Informational Witnesses: Pat Corcoran, Montana Power Company
Holly Franz, Advanced Silicon Materials Incorporated

Opening Statement by Sponsor:

REP. PAUL SLITER, HD 76, Flathead Valley, stated this piece of legislation dealt with consumer protection and working family protection. He explained how the restructuring took place in 1997, and several things have happened through the years. Many of the industrials have opted out of the default supplier scenario. When the eighteen month contracts ran out so did their affordable power and across the west there was a shortage of electricity. He added the demand was higher than the supply and that has driven the prices higher than what was anticipated, putting us in an energy crisis. It is possible industrials should have stayed with the default suppliers longer than they did. He believes we should not punish those employers and employees for a mistake that was made. HB 474 attempted to help those industrials by providing a stable bridge through the transition period, and until stabilization of the market. This bill places a tax at the generation level during the wholesale transaction. Revenue is going to be necessary in order to provide for some stability in the prices Montanans would pay until the stabilization of the market occurs. He felt deregulation in Montana was a good idea and the free market should be allowed to run its course.

Proponents' Testimony:

Gary Feland, PSC, supported many of the concepts in the bill. He felt the bill was needed, but it also needed a lot of work. He added they should leave no stone unturned while searching for a solution towards the energy problems of Montana.

REP. DAVE GALLIK, HD 52, supported the legislation and added it was a very good concept. He mentioned the differences of another bill affecting this legislation. He felt this bill could be something for the people of Montana and show how this legislature did do something with regard to the energy situation. He thought the bill would need to be amended, adding some of the aspects of high cost energy relief for consumers.

Rachel Haberman, Energy Share of Montana, supported the low income set aside portion of HB 474 found in Section two. She mentioned since the mid-1980s Energy Share had been receiving oil overcharge funds, but that would end on June 30, 2001. They would lose about one million dollars per biennium. She hoped that some of the low income set aside in this bill would be used to replace those funds.

Tom Daubert, Ash Grove Cement Company, supported restructuring and added Montana faces a grossly dysfunctional market currently. That threatens the survival of every industry in Montana which chose to leave the system.

Warren McConkey, Flathead Electric Cooperative, Energy Northwest, shared some background of FEC. He expressed concern that business customers be treated fairly in electricity pricing. They were the only cooperative that would be exposed to the market place. They were not concerned about the past history, but concerned about what was going to take place soon, the future contracts were going to be a problem. The electric industry was complex in scheduling, it has reserves, supply and demand, transmission constraints and needs guidance through the transition period. He said they do not have the option to shut down because they have an obligation to serve.

Opponent Testimony:

Jerome Anderson, PPL Montana, submitted written testimony **EXHIBIT(feh47a01)**.

Dave Kinnard, PPL Montana, submitted written testimony **EXHIBIT(feh47a02)**.

Ken Morrison, PPL Montana, said under this bill the WET tax receipts would be deposited in the state general fund. There was no direct connection between the increased tax and reduction in consumers' electricity rates, instead they would see an increase in their bill because the tax would be passed through to the consumers. Any reduction in consumers' bills must come from corporate tax credits claimed by the default supplier and any rate reduction offered by the PSC would likely not occur until 2004. He referred to a chart and explained the tax credits.

John Alke, Montana-Dakota Utilities, felt the bill would raise the WET tax and the rates that customers would pay. He added there were only 24,000 customers on their system. If this bill were to pass in its current form, it would have customers writing a check for more than $100 to subsidize rates for customers on the MPC system. He was confident there would be an unintended result and he had prepared an amendment to fix that problem. He presented it to the committee **EXHIBIT(feh47a03)**.

Tom Ebzery, Puget Sound Energy, Pacific Corp, Avista Corp, Portland General Electric, submitted a written testimony **EXHIBIT(feh47a04)**. He handed out an article on power bills rising **EXHIBIT(feh47a05)** supplemental information **EXHIBIT(feh47a06)**.

Jim Mockler, Montana Coal Council, wondered they there would be a price problem if there was not a supply problem. He said they would hear from a former supplier about high rates. He felt the market was screwed up and wondered who owned the power in the state. Montanans didn't choose to benefit and invest in the power generated in this state when they had the opportunity. He opposed the legislation and didn't think it would accomplish anything for the state.

Webb Brown, Montana Chamber of Commerce, said there could be a chilling effect on potential development in the future. He didn't think that was the intent of the bill.

Con Malee, Energy West Resources, opposed the bill and said Energy West Resources was currently the largest electric marketer as a result of deregulation in Montana. The passage of this bill would kill deregulation for the next five years. This bill may provide a competitive advantage to out-of-state generators currently marketing to Montana customers, but it was designed to penalize certain companies in Montana, and would damage many others in the process.

Mary Whittinghill, Montana Tax Payers Association, said her organization was concerned about the energy issues in Montana, but they don't believe that using taxation is the solution to problem.

Don Allen, Western Environmental Trade Association, was dismayed with the implications of this bill. Many of their members were people who worried about whether or not they could survive. There has to be some way to deal with the issue. He didn't think the bill was the way to do it.

Carl Nyman, Anaconda Project Facilitators, said that they were currently working on three projects with industrial customers in various stages of planning and development for energy generation. This bill would effectively stop those projects, all of which would provide increased jobs and a tax base for Montana. He added this bill would force those developers to abandon Montana.

Informational Testimony:

Pat Corcoran, Montana Power Company, presented a chart **EXHIBIT(feh47a07)** and explained the calculations of WET Tax proposals.

Holly Franz, Advanced Silicon Materials Incorporated, said they were in an unusual position. She said they were originally exempted from the WET tax because they were offered a contract from MPC to entice them into moving into the state. It was a long-term contract, so they have never been subject to choice. Because of that, they were exempted from the WET tax. This bill allowed consumers an electricity supplier prior to July 1, 2001, to make an election back to the default supplier. Her concern with language in the bill was it wouldn't include ASMI because they never made that selection, but yet they were not with the default supplier.

Questions from the Committee:

REPRESENTATIVE GARY MATTHEWS asked the sponsor how he felt about the MDU amendment. **REP. SLITER** said he would consider the amendment to be a friendly amendment. He didn't anticipate Montanans footing the bill for other Montanans.

REP. MATTHEWS asked if an amendment to exclude future generation in Montana could be added. **Mr. Kinnard** thought it would create some problems with discriminatory conduct.

REP. MATTHEWS asked how he felt about the MDU amendment. **Mr. Kinnard** said he would have the same difficulty when trying to pick and choose who should or shouldn't be covered by particular pieces of taxation.

REP. MATTHEWS asked about regulation. **John Alke** responded he fundamentally disagreed with Mr. Kinnard's remarks. He said his client was a vertically integrated utility with an obligation to serve. All of its generation and processes were regulated and they had no excess supply to their demand. He added they had no ability to capture the super profits as would PPL and MDU.

REP. TOM DELL asked the sponsor for a response towards lessening the load due to no incentive of generating new supply because of the tax increase. **REP. SLITER** said this was designed to be a bridge, and in the interim between when this bill would be effective and when the market stabilizes, an exemption for new generation would be advisable.

REP. DELL thought the perception was PPL was out to plunder and pillage and our response was to tax them into submission. **REP. SLITER** stated to a certain extent the characterization was accurate. He thought Montanans would expect companies to do business in Montana and make a fair profit.

REP. DELL asked the sponsor of his visions for the bill. **REP. SLITER** said it dealt with a timing issue within the bill, which needed work and was worth doing.

REP. SCHMIDT asked how to amend and work on the bill. **Mr. Feland** mentioned one of the issues dealt with the timing on when the tax would kick in, who would be taxed etc.

REP. SCHMIDT asked if he could be more specific on the tax as a whole and the impact on the industry. **Mr. Feland** said the tax needed to be adjusted according to what the market would be, in order to deliver affordable electricity to the rate payers.

REP. SCHMIDT asked about the companies mentioned in testimony. **Mr. Feland** believed some of the companies, outside of the default supplier, would probably be exempt. New generation ought to be exempt in order to encourage generation. He stated currently 50% of our power goes out of the state.

REP. SCHMIDT asked if new generation should be built in Montana. **Mr. Feland** answered yes, it absolutely should be.

REP. GARY FORRESTER asked for a response to as to whether this would have a chilling effect on new industries. **Mr. Feland** said this tax would have an effect on the people in the default supplier group. He didn't think that it would affect any of the ones outside of that.

REP. FORRESTER asked the same question to another proponent **Mr. Brown** felt it would have that effect.

REP. FORRESTER worried the legislature was getting into a realm of telling companies how much profit they could make. **REP. SLITER** thought by providing some of the exemptions that were discussed earlier, some businesses could look at the opportunity to come into Montana and purchase inexpensive power to operate their businesses.

REP. FORRESTER asked about people making big profits on the stock market. **REP. SLITER** said they would already be taxed on the capital gain of the sale of that stock and the mechanism was in place. He didn't see the correlation of the two.

REP. FORRESTER asked if this bill was brought forward to be used as a hammer over PPL's head to lower the price of power in a futures contract or a buy-forward contract. **REP. SLITER** said the intent of the bill was to provide a mechanism to put inexpensive power into the homes and businesses of Montanans.

REP. ROY BROWN asked for clarification of the mechanism and how the tax was paid **REP. SLITER** said it may not actually be the WET tax, it may be a license tax. What this contemplates was the tax to be passed all the way through as a line item, which he didn't anticipate to be the case. The WET tax revenue, as the bill was written, comes into the general fund.

REP. BOB STORY asked for clarification of the chart. **Mr. Corcoran** replied the information was taken from a fiscal note that accompanied the original WET tax bill in 1999. The WET tax came from two different places. The portion related to Montana investor-owned generation that was delivered in the state and assessed at the customer level.

REP. STORY referred to lines 33 to 37 of the chart and wondered if the actual amount of kilowatt hours were consumed on the default supplier system. **Mr. Corcoran** answered yes, that was correct.

REP. STORY asked for clarification regarding the statement PPL would be subsidizing the lower contract price to $2 billion dollars. **Mr. Kinnard** said it would be a combination of the delta between what the power was sold to under the WTSA to the Montana consumers versus what the market price was for that power.

REP. SCHMIDT asked if there would be additional generation and how would there be price problems. **Mr. Kinnard** explained the difficulty with the new plants, and they researched a five to eight year window before they would have those plants operating.

REP. SCHMIDT asked what the trade-off would be if the legislature didn't increase the WET tax, so the price of power was reasonable. **Mr. Kinnard** stated they would continue to talk to the legislature in a fashion of trying to come up with some constructive solutions that will afford Montana consumers and industrials a fair price of power.

REP. STORY asked, assuming going from 2.25 to 6 cents would generate another $315 million in revenue from the MPC contract, what did PPL pay for the generating facility? **Mr. Kinnard** said the up-front payment was $757 million.

REP. STORY asked if PPL invested the amount in this project, would it be a good return on their investment if they could pay it off in three years. **Mr. Kinnard** said, there were a lot of unforeseen circumstances and it is difficult to know.

REP. CAROL JUNEAU clarified Montana was selling 50% of its energy out of state. **Mr. Feland** thought it was approximately 60%.

REP. JUNEAU asked why the need for more power plants. **Mr. Feland** said MDU could generate electricity for 3.7 cents. When the contracts go off on the moratorium, it would be 6 cents per kilowatt hour. The California market was broken and that was where the power was going.

REP. JUNEAU asked if the sponsor gave any consideration to using a portion of the revenue to support specific state responsibilities such as education. **REP. SLITER** replied the money would enter into the general fund as a result of this tax, under the bill, but wouldn't stay in the general fund. It was meant for the tax credits.

REP. JUNEAU said the bill mentioned a portion of the money going to the low income assistance and she asked if that included the three portions involved. **REP. SLITER** understood it was under 69-8-412, subsection (1) and subsection (b) for one program, so it would be only one component.

Closing by the sponsor:

{Tape 2; Side A}

REP. SLITER didn't want to discourage new generation in Montana, but to encourage it over the long term. If an exemption for new generation was necessary then that would be something they should research. He suggested changing the tax from a dollar value to a percentage of the price per kilowatt hour, as the price fluctuates, the revenue would also. He wanted to note again how it appeared the timing in the bill for the credits may need some adjustments. He thought it was a dangerous thing for Montanans to see resources leave Montana. If our resources were being used to generate power that wasn't used, there was a problem. He addressed the intent of the bill to provide a concept or mechanism over the next several years ensuring affordable energy to be produced within the state.

EXHIBIT 1
DATE 3-1-01
HB 474

FOR THE RECORD MY NAME IS JEROME ANDERSON—I AM AN ATTORNEY IN HELENA, MONTANA—

I REPRESENT PPL MONTANA, THE COMPANY THAT PURCHASED, IN LATE 1999, MOST OF THE GENERATING FACITILIES PREVIOUSLY OWNED AND OPERATED BY THE MONTANA POWER COMPANY. THOSE FACILITIES INCLUDE DAMS LOCATED ON THE MADISON AND MISSOURI RIVERS—A DAM AT MYSTIC LAKE IN SOUTH CENTRAL MONTANA—THE KERR DAM AT THE SOUTH END OF FLATHEAD LAKE NEAR POLSON—AS WELL AS A PORTION OF THE COAL-FIRED GENERATION FACILITIES AT COLSTRIP AND A SMALLER COAL-FIRED PLANT AT BILLINGS.

WE GENERATE APPROXIMATELY ONLY 20% OF THE TOTAL ELECTRICAL POWER ACTUALLY PRODUCED IN THE STATE. OTHER LARGE GENERATORS INCLUDE THE MONTANA POWER COMPANY—BPA—MDU—AVISTA—PUGET SOUND POWER & LIGHT—PORTLAND GENERAL ELECTRIC—PACIFIC CORP—AND YELLOWSTONE AND COLSTRIP LPS. ALTHOUGH MOST PEOPLE

BELIEVE WE ARE THE ONLY SIGNIFICANT ELECTRICAL POWER PRODUCER IN THIS STATE, THIS IS CLEARLY NOT THE CASE. AS YOU REVIEW THE IMPACT OF HB 474 PLEASE REMEMBER THAT, ALTHOUGH THE BILL WAS CONCEIVED AS A PUNITIVE TAX MEASURE TO BE IMPOSED ON PPL MONTANA, IT HAS LIKE APPLICATION TO ALL OTHER GENERATORS IN THE STATE—PRESENT AND FUTURE. I NOTE THAT AT LEAST ONE OF THE GENERATORS HAS MADE AN EFFORT TO BE AMENDED OUT OF THIS BILL. TO CHOOSE BETWEEN GENERATORS IN THE APPLICATION OF THIS LEGISLATION WOULD SERIOUSLY IMPAIR ITS CONSTITUTIONALITY.

MR. DAVID KINNARD, GENERAL COUNSEL FOR PPL MONTANA, WILL DISCUSS IN GREATER DETAIL MORE SPECIFIC MATTERS WITH REGARD TO THE COMPANY—AND MR. KEN MORRISON, FORMERLY WITH THE MONTANA DEPARTMENT OF REVENUE, AND NOW A REPRESENTATIVE OF PPL MONTANA, WILL DISCUSS OUR VIEW OF THE TECHNICAL PROBLEMS ASSOCIATED WITH THE BILL.

AS FOR MYSELF, I HAD PREPARED FORMAL COMMENTS WITH REGARD TO HB 474 AND ITS IMPACT ON PPL MONTANA, WHICH I INTENDED TO PRESENT TODAY. WHEN I GOT UP THIS MORNING I SCRAPPED THOSE COMMENTS.

I SCRAPPED THOSE COMMENTS BECAUSE LAST NIGHT I HAD A DREAM. —THAT DREAM HAD A PROFOUND IMPACT ON ME—I REALIZED THIS MORNING THAT A DESCRIPTION OF THAT DREAM WOULD TELL YOU MORE ABOUT THE ANTI-CONSUMER AND ANTI-BUSINESS IMPACT OF THIS BILL THAN I COULD IN ANY PREPARED REMARKS THAT I MIGHT GIVE YOU THIS AFTERNOON.

IN THAT DREAM I DREAMT THAT I WAS READING THE LATEST DAILY ADDITION OF THE WALL STREET JOURNAL.

AS YOU KNOW THE WALL STREET JOURNAL IS A DAILY BUSINESS AND ECONOMIC ORIENTED PAPER OF GENERAL CIRCULATION IN THE UNITED STATES. IT'S READ BY NEARLY ALL WHO INVEST CAPITAL AND BUILD FACILITIES. AS THE

DREAM UNFOLDED I READ THE FRONT PAGE OF THE WALL STREET JOURNAL AND THEN OPENED IT TO PAGES 2 AND 3—PAGE 2 AS USUAL CONTAINED GENERAL BUSINESS NEWS.

BUT THEN I LOOKED AT PAGE 3 AND I WAS ASTOUNDED.—IT CONTAINED A FULL PAGE ADVERTISMENT SPONSORED BY THE MONTANA DEPARTMENT OF COMMERCE AND PAID FOR BY FUNDS APPROPRIATED BY THIS LEGISLATURE—AS I SAID THE AD WAS FULL PAGE—THE TEXT WAS IN LARGE RED LETTERS—BOUNDED BY A BLUE BORDER. THE AD SAID:

> "WELCOME TO MONTANA—THE LAST BEST PLACE FOR ECONOMIC GROWTH—WHERE YOU CAN INVEST $800 MILLION IN CAPITAL FACILITIES AND THEREAFTER HAVE THE STATE TAXES ON YOUR PRODUCTS RAISED BY 3033%."

I REALIZED THIS MORNING THAT WHILE THIS WAS A DREAM IT CORRECTLY PORTRAYED THE MESSAGE THAT HB 474 SENDS TO ANYONE WHO MIGHT BE CONSIDERING

CONSTRUCTING A LARGE COAL OR GAS-FIRED GENERATING PLANT IN THIS STATE—MONTANA ISN'T WHAT YOU MIGHT EXPECT IT TO BE.

MONTANA NECESSARILY EXPORTS A MAJOR PORTION OF THE ELECTRICAL POWER GENERATED WITHIN ITS BOUNDARIES—ANY INVESTOR CONTEMPLATING CONSTRUCTION OF A FACILITY HERE MUST LOOK TO OUT OF STATE MARKETS IN ORDER TO SELL THE POWER THAT IS GENERATED. THE GENERATING FACILITY MUST SELL ITS POWER OUT OF STATE IN ORDER TO DEVELOP THE CASH FLOW NECESSARY TO PAY OFF THE BORROWED CAPITAL REQUIRED TO CONSTRUCT THE FACILITY. LENDERS LOOK TO POTENTIAL CASH FLOW TO JUSTIFY LENDING MONEY FOR THESE FACILITIES. IF INVESTMENT BANKERS SEE THAT A FACILITY WILL BE SUBJECT TO HIGH TAX RATES THAT MAKE THE PRODUCT MORE COSTLY AND NON COMPETITIVE IN THE MARKET PLACE, THEY WILL RECOMMEND THAT THE PLANT BE BUILT IN ANOTHER STATE WHERE SUCH TAX RATES DO NOT APPLY.

THIS ADMINISTRATION AND THIS LEGISLATURE TOOK OFFICE IN EARLY JANUARY WITH THE STATED PURPOSE ON BOTH SIDES OF THE AISLE TO EXPAND ECONOMIC OPPORTUNITY AND CREATE MORE JOBS IN THIS STATE. THIS BILL WILL HAVE EXACTLY THE OPPOSITE EFFECT.

I HAVE BEEN AROUND THIS LEGISLATURE FOR FIFTY-FOUR YEARS EITHER AS A MEMBER OR AS A LOBBYIST. I DON'T RECALL ANY PROPOSED TAX OTHER THAN A GENERAL SALES TAX INTRODUCED IN THIS LEGISLATURE THAT WOULD RAISE THE AMOUNT OF MONEY ($228 MILLION OVER THE BIENNIUM) OR WOULD INSTITUTE A TAX RAISE OF THIS MAGNITUDE (3033%). IT ASTOUNDS MANY THAT THIS LEGISLATURE WOULD EVEN SERIOUSLY CONSIDER A BILL OF THIS NATURE—AND YOU CAN CHANGE THE TAX INTO ANY KIND OF TAX THAT YOU WISH BUT THE EFFECT OF THE BILL WILL BE THE SAME.

WITNESSES FOLLOWING ME WILL EXPLAIN TO YOU WHY EVERYONE—RESIDENTIAL AND SMALL COMMERCIAL

CONSUMERS AS WELL AS THOSE INDUSTRIALS WHO OPT INTO THE SYSTEM—WILL ULTIMATELY PAY THE TAXES IMPOSED IN THIS BILL IN ONE WAY OR ANOTHER.

AGAIN I SAY THAT THIS BILL IS BOTH ANTI-CONSUMER AND ANTI-BUSINESS ORIENTED.

SO PLEASE CAREFULLY CONSIDER WHAT YOU ARE ASKED TO DO IN PASSING THIS PIECE OF LEGISLATION. THERE IS AN OLD AXIOM TO THE EFFECT THAT, ONCE A TAX IS PUT IN PLACE, IT STAYS FOREVER. THAT ALSO GENERALLY APPLIES TO THE RATE OF A TAX. BE SURE YOU UNDERSTAND ALL OF THE CONSEQUENCES UNINTENDED OR OTHERWISE AS YOU CONSIDER HB 474. WE BELIEVE THAT AFTER YOU CONSIDER ALL OF THOSE CONSEQUENCES YOU WILL VOTE AGAINST THIS BILL.

AND AS YOU GO TO BED TONIGHT REMEMBER THE AD ON PAGE 3 OF LAST NIGHT'S WALL STREET JOURNAL.

MR. DAVID KINNARD, GENERAL COUNSEL OF PPL

MONTANA WILL FOLLOW ME. THANK YOU VERY MUCH.

EXHIBIT 2
DATE 3-1-01
HB 474

Madam Chairman, members of the Committee, Representative Sliter; my name is Dave Kinnard and I am the Vice President and General Counsel for PPL Montana. In that capacity I must first advise you that I believe HB474 has serious legal deficiencies that cannot be easily overcome. The bill also contains substantial flaws in methodology and process which Ken Morrison will explain later.

I am here representing **not just** one of your newest large corporations doing business in Montana. I am here representing the 500 taxpayers and proud employees of PPL Montana, from Tfalls to Ennis to Billings to Colstrip to GF. Together they represent a payroll of $28.5 Million. PPLM's estimated annual tax bill is approximately $18.0 Million for all taxes in the aggregate.

In addition to our generating facilities, PPL Montana has a corporate office in Billings, a hydro-operations facility in Butte and a corporate relations office in Helena. A separate energy marketing affiliate of our parent company maintains an office in Butte called EnergyPlus. With very few exceptions, our employees are all native or long time Montanans. For instance, I have lived in Billings for 37 years and practiced law there for 24 years.

PPLM is proud to be a significant corporate citizen, with donations generally divided into four areas; culture and the arts, human services, economic and environmental education projects, and education.

We are very excited about several economic development projects that we are working on: to help put up a state economic development website; to provide economic development education to all persons employed in economic development areas in Montana beginning in April, including, working with MEDA Certified Communities and Rural Development Partners; special economic development research projects; and assistance to attendees of economic development trade shows.

PPL Montana generates about one-fifth of the power in Montana - approximately 1,100 MW out of a total of around 5,000 MW. About half of ours is hydro-generation and half is coal-fired turbine generation. Those figures represent the maximum if everything is operating normally, but as you all know, we are in the midst of a drought, which has caused the hydro generation - and our overall production capacity to drop significantly. This past week our dams were only operating at 39% capacity as a result of low water and icing on the rivers.

Montana is our primary market. Normally, about 80% of the power we generate is sold within the state of Montana to consumers and small businesses. The remainder is split between PPL EnergyPlus and other contracts. Of our generation, about 2% was sold in the last six months to the CAISO, a portion of which was under a DOE order requiring us to do so.

As electricity is a commodity, traded on the Mid-Columbia exchange, weather is an important factor in predicting our productivity, just as it is in the grain, hay or cattle markets. This summer's water projection is currently expected to be a repeat of last year - only perhaps worse.

One of the central differences between Montana and California - is that in normal years we are a net exporter of power. Montana is part of a regional marketplace. You have all heard about the supply deficiencies that have caused problems. That is also a two way street if our generation is short and we need to procure power from out of state.

The under-building of new generation in the west has been growing for years. PPL is doing its share to correct the deficiency by constructing about 900 MW additional generation in Arizona and 1200 MW additional generation near Walla Walla, Washington. This will relieve the pressure on the western grid.

What wasn't anticipated was that the weather pattern last year would cause such a scarcity of hydro production. The Western power grid is an inter-dependent region and these two factors combined to make energy prices spike to a distressing degree. All around us, there is evidence of this.

I mention this now, because in the apparent rush to tax us more, I respectfully request that this body consider first the price protection PPLM has been providing since acquiring the plants in Dec. 1999 and will provide for at least the next 16 months.

The current agreement with MPC to provide generation for the consumer and small business load is our principal responsibility through June of 2002. Depending on the time of day or the time of year that amount can vary greatly and be as high as our total generation capacity. It's vital that you understand that this puts our company at a great risk. Any time our production capacity is off-line for planned or unplanned maintenance, we are required to go into the marketplace and purchase power, which last summer for instance during plant outages and also during the drought and forest fires, ranged from $400/MW to $600/MW, to serve a contract that pays us $22.25/MW.

From Dec. 1999 through June 2002 PPL Montana will have subsidized the price of power to residentials and small businesses in this state in an amount of approx. $2 Billion by providing the power at below market rates.

To date, PPL has made an approx. $800 Million investment in Montana. We plan on continuing to spend substantial sums to upgrade and maintain our current facilities to serve present and future load. In addition we are presently investigating expansion opportunities within the state and outside of Montana.

Unfortunately HB474 makes it look like insanity for PPL and other generators to make any investment in Montana. All of us who live here want economic development. If you are like me, you are tired of seeing business relocate to Boise, our children going out of state to college and to find high paying jobs and our abilities to attract new business suffering. All of that is going to get worse instead of better if there is not sufficient power for this state and more importantly if there is not a pro-business attitude.

This bill sends a chilling economic development message not just to electrical generators but to any industry looking at the state. We should be busy inventing incentives for current energy generators to sell in Montana rather than making it harder to do business here. Bashing PPL Montana who came to the state long after deregulation was passed is the wrong message to send to the rest of the country. Remember too that without facilities like Colstrip much of the private generation in the state is from the dams we own that were built between the late 1800's and 1930's. They are not going to last forever.

When I was in college at Bozeman, there were those that wanted to put a fence around Montana and protect it from the "outsiders". That didn't happen but the vestiges of that provincialism continue today, and is one of the reasons we are always at the bottom of the comparative state rankings. If it is cheaper for out of state generators to sell power elsewhere other than in Montana we will suffer as a state during those times we are short of power. If

there is going to be a shortage of power, **the prices will be higher**, which is the exact opposite of what you desire.

I urge you not to make that mistake which we will all regret for years to come. Do not become the highest taxing legislature in history.

We respectfully request a do not pass on HB474.

Thank you for your attention. With your permission Madam Chairman, I would now ask Ken Morrison to review the technical deficiencies of the bill.

EXHIBIT 3
DATE March 1 2001
HB 474

MONTANA-DAKOTA UTILITIES CO.
Proposed Amendment
to
HB 474

Page 3
Following: Line 8
Insert: "(f) Electricity sold or delivered by a public utility described in 69-8-201(4)."
Renumber: Subsequent subsection

Effect of Amendment. The bill, as currently drafted, would impose a $2.7 million tax increase upon Montana-Dakota Utilities Co., for purposes of reducing rates on the Montana Power Company system. The effect of the amendment is to exempt Montana-Dakota from the wholesale energy transaction tax imposed by 15-72-101 et seq. Since MDU only paid about $81,000 in WET tax last year, the impact of the amendment upon the state treasury is very small. However, the amendment is absolutely essential to protect MDU customers from what would be a very large unintended consequence of HB 474.

EXHIBIT 4
DATE March 01 2001
HB 474

Testimony of Tom Ebzery in Opposition to HB 474

Exhibit 1: Taxes Paid in Montana by Company

Puget Sound Energy: 50% ownership in Colstrip Units 1 & 2, 25% in Units 3 & 4

Capital investment in Montana: well over $700 million

Taxes paid since plants operational: $211 million

Coal Severance and Gross Receipts Tax paid (estimated): $97 million

WET Tax paid in 2000: $670,000

WET Tax due if HB 474 is enacted: $22,110,000

Portland General Electric: 20% interest in Colstrip Units 3 & 4

Capital investment in Montana: over $450 million

Taxes paid since plants operational: over $96 million

Coal Severance Tax paid (estimated): $30 million

WET Tax paid in 2000: $279,979

WET Tax due if HB 474 is enacted: $9,332,633

Avista Corporation: 15% interest in Colstrip Units 3 & 4; own Noxon Rapids hydro

Capital investment in Montana: $430 million

Taxes paid 1959-2000: $101,712,734

Coal Severance Tax paid (estimated): $25 million

WET Tax paid in 2000: $450,000

WET Tax due if HB 474 is enacted: $15,300,000

PacifiCorp: 10% interest in Colstrip Units 3 & 4; own Bigfork Dam hydro facility

Capital investment in Montana: over $250 million

Taxes paid since 1980: $81,830,238

Coal Severance Tax paid (estimated): $15 million

WET Tax paid in 2000: $140,000

WET Tax due if HB 474 is enacted: $4,700,000

EXHIBIT 5
DATE March 1 2001
HB 474

Power bills may rise up to 44%

Idaho Power files emergency request

By John Tucker
The Idaho Statesman

Idaho Power put a preliminary price tag on the power crisis Friday.

The electric utility said it has spent $161 million more this winter than it expected to buy electricity for Idaho customers, and it needs an emergency rate increase to pay for it.

If granted, the rate increase would boost residential customer bills by 24.3 percent as early as March 26.

Farmers and some businesses would be hit even harder, with increases ranging from 32.8 percent to 44.5 percent.

Ric Gale
Says increase now will help save energy

Officials for the company filed their request on Friday with the Idaho Public Utilities Commission, asking for an emergency 1.3-cent-per-kilowatt-hour increase, across the board, that would stay in effect for a year.

And even if the increase is granted, Idaho Power officials said rates could go even higher in April when the company and the Public Utilities Commission adjust rates through the "power cost adjustment" mechanism. Under the PCA, the two organizations try to evaluate what power will cost to supply in the coming year and then set the rates accordingly.

With the emergency increase requested Friday, the average customer — one who uses 1,200 kilowatt-hours a month — would pay a $78 monthly bill rather than the current $63.

If approved by the PUC, the electricity rate increase would pay off about $161 million in excess funds Idaho Power was forced to pay for power on the open market since last April, when the last PCA adjustment occurred.

Company officials warned in January they might have to ask for a 24 percent increase.

Since then, matters have gotten worse rather than better.

A year ago, electricity purchased on the open market cost Idaho Power $26.56 per megawatt-hour. Rates peaked in December at more than $770 per megawatt-hour, and Idaho Power has had to spend $300 a megawatt-hour in recent months.

EXHIBIT 6
DATE March 1 2001
HB 474

TESTIMONY OF TOM EBZERY ON BEHALF OF PUGET SOUND ENERGY, PACIFICORP, AVISTA CORP., AND PORTLAND GENERAL ELECTRIC IN OPPOSITION TO HB 474 (SLITER, R-SOMERS)

Madam Chair and members of the House Committee on Federal Relations, Energy & Telecommunications. For the record, my name is Tom Ebzery and I am an attorney from Billings appearing on behalf of Puget Sound Energy of Bellevue, Washington; PacifiCorp of Portland, Oregon; Avista Corp. of Spokane, Washington and Portland General Electric of Portland, Oregon. We strongly oppose HB 474 and find it totally at cross-purposes of where this state desires to go in solving short, medium and long-term electricity issues. HB 474 has already sent a negative message to the Pacific Northwest by its introduction and the implications to our efforts to stimulate economic development are clearly negative.

Let me tell you about the companies that I represent. They have contributed to this state's coffers in the past 40 years. These companies have been here since the late 1950s in the case of Avista (formerly Washington Water Power) with its hydro facility at Noxon Rapids. Puget Sound Energy and Montana Power Company were responsible for Colstrip Units 1 and 2 in their construction and operation in the 1970s. PacifiCorp, Portland General and Avista have been participants in Colstrip Units 3 and 4 since the early 1980s. Without these investors I am confident that the Colstrip plants would have never been built in the first place and if that is true we would really be in trouble for electric supply.

The utilities I represent have the following things in common: they collectively own over half of the Colstrip units in southeastern Montana. They have no

Montana customers--industrial or residential. They are all investor-owned utilities regulated by the Washington Utilities & Transportation Commission and the Oregon Public Utilities Commission, respectively. In the case of PacifiCorp and Avista, the Idaho Utility Commission is involved. The electricity from the Colstrip units and Noxon for Avista goes directly to their territorial customers and is tariffed by the Commissions. We are not generators and suppliers as the term is now used. We are poles and wires companies for the most part with an obligation to provide electricity to customers in our service territories as prescribed by law in their various states.

Another common thread with the utilities is they all pay Montana taxes and lots of them. The utilities I represent pay the Corporate License tax, Property tax, Energy Producers Tax which is a tax on generation, the Montana Coal Severance Tax on coal purchased for the utilities and the WET Tax. The Wholesale Energy Transaction Tax (WET) passed during the 1999 Legislature and subject of this bill was intended to make up for the reduction in the property tax on generation from a nation's high of 12% of value to 6%. The tax does not apply to cooperatives and was intended for a fixed purpose. Taking that tax and increasing it 34-fold to help solve problems resulting from deregulation is bad public policy.

Discussion of Taxes Paid and Impact to Each Company from HB 474

Deregulation: SB 390 is widely identified as the culprit responsible for the problems we are experiencing and expected to experience in July, 2002 when the rate cap ends. Let me explain the positions of the targeted utilities on SB 390 in 1999. Avista, Puget and Portland General took no position on this legislation and PacifiCorp, owning a service territory in the Flathead area in

1997, was strongly opposed. Avista, Puget and Portland General were unregulated in Montana and felt this was a Montana issue involving regulated investor owned utilities with Montana customers. Little did we know that four years later we would be asked to help cover problems resulting from this legislation.

Legality: There is no purpose on my part to raise constitutionality issues regarding this 34-fold increase which under this bill treats in and out-of-state customers differently. That is for later and the courts. The Legislature can do what it pleases even though there is a strong probability that this is over the line from a legal standpoint, not to mention fundamental fairness.

A further common theme is that all of these utilities are from the Pacific Northwest which is also trying to grapple with the same issue as this Legislature, namely that demand has outstripped supply and unless we can return to a balance everyone in the region is facing the same problems. The fact that certain Montana industrial customers who are pleading for state assistance in one form or another bought power from July 1998 until last year at significantly reduced prices and chose to ignore offers of longer term contract is not unique in Montana. This practice is ongoing right now in Washington. However, so far no one over there has suggested a 34-fold increase in the tax on a few to pay for the current problem. We are linked to the Pacific Northwest and to put it mildly regulators and those affected are shocked at HB 474 pending before this Legislature. The entities I represent and PPL Montana will pay nearly all the tax and we either opposed, were neutral or not even situated in Montana when SB 390 was enacted. Clearly you should not overlook this fact in reviewing this legislation.

Ironically while this bill is heard, SB 319 and other measures to encourage new generation are moving in the Montana House. A mixed message is being sent but the negative contained in this bill will clearly cast a black cloud over potential new generation within the confines of Montana. Repercussions from other states in the regions Montana does business with should not be overlook. It is late but not that late. Table this bill today.

EXHIBIT 7
DATE March 01 2001
HB 474

	A	B	C	D	E
1	Proposed Rate	Rep. P. Sliter			
2	House Bill No. 474				
3	Calculation of WET Tax Proposal				
4	Impact on MPC Distribution Customers				
5					
6	**MT Investor owned generation - In-State**				
7	2001 kWh Estimate			10,000,000,000	
8	Current Rate			$ 0.000150	
9	WET Tax payable by MT Consumers for in-state deliveries			$ 1,500,000	43.3%
10					
11	**MT Investor owned generation - Out of State**				
12	2001 kWh Estimate			13,073,843,000	
13	Current Rate			$ 0.000150	
14	WET Tax payable by Generators for deliveries out-of-state			$ 1,961,076	56.7%
15	**Estimated Current Total WET Tax Revenue**			$ 3,461,076	
16					
17					
18					
19	**House Bill No. 474 Funding**				
20	MT Investor owned generation - In-State			10,000,000,000	
21	HB 474 WET Tax Rate			$ 0.005000	
22				$ 50,000,000	
23	MT Investor owned generation - Out of State			13,073,843,000	
24	HB 474 WET Tax Rate			$ 0.005000	
25				$ 65,369,215	
26	**Annual HB No. 474 Total WET Tax Funding**			$ 115,369,215	
27	less Current WET Tax Revenue			$ 3,461,076	
28	**New Annual WET Tax Funding**			$ 111,908,139	
29			99.5%	$ 111,348,598	
30	Source:				
31	1999 HB174 Fiscal Note - 2001 kWhs	23,073,843,000			
32					
33	MPC Retail Rate Calculations		Increased		
34	1999 MPC Retail Sales	Billed kWhs	Tax Amount	MPC Cust Rate	
35	Small Customers	4,858,434,000	$ 29,885,462	0.006151	
36	Large Customers	2,474,217,000	$ 15,219,538	0.006151	
37	Total	7,332,651,000	$ 45,105,000		
38					
39	Total WET Tax Credit MPC Rate Calculation	7,332,651,000	$ (111,348,598)	(0.015185)	
40					
41					
42	**Net Impact on Typical Monthly Residential Bill using 750 kWhs**				
43	Current Bill	$ 51.00			
44	Increased WET Tax Amount	4.61			
45	Increased Power Supply Costs	24.75	**		
46	Subtotal	$ 80.36			
47	WET Tax High Energy Costs Credit	(11.39)			
48		$ 68.97			
49					
50	** Assumes 6.0 cent power supply rate starting July 1, 2002				
51	Current supply rate is approximately 2.7 cents, resulting in a 3.3 cent increase				

HOUSE OF REPRESENTATIVE
ROLL CALL

FEDERAL RELATIONS, ENERGY AND TELECOMMUNICATIONS

DATE March 1 2001

NAME	PRESENT	ABSENT	EXCUSED
REP. AUBYN CURTISS, CHAIRMAN	✓		
REP. DOUG MOOD, V.C. MAJORITY	✓		
REP. TOM DELL, V.C. MINORITY	✓		
REP. DEE BROWN	✓		
REP. ROY BROWN	✓		
REP. GARY FORRESTER	✓		
REP. CAROL JUNEAU	✓		
REP. GARY MATTHEWS	✓		
REP. ALAN OLSON	✓		
REP. TRUDI SCHMIDT	✓		
REP. JOE MCKENNEY	✓		
REP. BOB STORY	✓		

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER
FEDERAL RELATIONS, ENERGY AND TELECOMMUNICATIONS

DATE March 1 2001

BILL NO. 474

SPONSOR(S) Slite

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	Rachel Habermann	Helena	Energy Share
P (O) I	Tom Ebzery	Billings	Avista Corp; Puget Sound Energy; Portland General Electric; Pacificorp
P (O) I	Con Malee	Anaconda	Energy West
P (O) I	EARL NEMAN	ANACONDA	ANACONDA PROTECT FACILITY
P O (I)	Holly Franz	Helena	AGIMI
P (O) I	John Alke	Helena	MDU
P (O) I	Ed Corcoran	BUTTE	MPC
P (O) I	Ken Morrison	Helena	PPLM
P (O) I	David Kinard	Billings	"
P (O) I	J. Bruce Anderson	Helena	PPL MT.
(P) O I	Gary Feeland	Helena	PSC
P O I			
P O I			
P O I			

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER
FEDERAL RELATIONS, ENERGY AND TELECOMMUNICATIONS

DATE March 1 2001

BILL NO. HB 474 SPONSOR(S) Slitter

TYPE
PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
P O I	Jim Mockler	Helena	MT Coal Council
P O I			
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

C:\Documents and Settings\cl2917\My Documents\visitor register.frm

EXECUTIVE ACTION ON HB 474

Motion: **REP. MOOD** moved that **HB 474 DO PASS.**

Discussion:

Mr. Maly gave an overview of the pertinent issues that are faced. MPC will have a continuing voice. He pointed out that there are numerous energy bills before the legislature. Many of these bills represent a clash of philosophies and it will be difficult to sort out which bills will work together and be good to pass out of the session. Cost-based rates and market-based rates are addressed in various bills. A discussion will need to take place dealing with how much authority the PSC is going to have. The authority they have now is not clear. There are "bridge" bills that would extend the PSC authority, expedite temporary generation and provide subsidized loans. There are "transformer" bills that would create state power authorities, allow for mergers of co-ops, and provide major expansion of PSC authority. The idea of conservation is also a theme recurrent that we have seen. In the west, deregulation is not working like it is supposed to. On a federal level they say it will work and FERC has been refusing to set a price cap in the west.

REP. MOOD commented that the sponsor had amendments.

Motion: **REP. MOOD** moved that **AMENDMENTS TO HB 474 BE ADOPTED.**

Discussion:

Mr. Maly explained the amendments saying that this is a dramatic change from the original bill.

REP. SCHMIDT asked for clarification of when it becomes a windfall, so that it would be tax. **REP. STORY** stated that there is a base price of five cents. Any price over that is windfall and is taxed at 90%.

REP. MATTHEWS asked what happened to the plan to exempt out eastern Montana.

REP. STORY commented that all of the WET tax is out of the bill right now.

REP. DEE BROWN asked what other similar windfalls have been across the state. **REP. FORRESTER** replied that it mirrors language in a federal statute allowing for windfall.

REP. SCHMIDT asked if there are other bills with windfall tax. **Mr. Maly** replied that there are some that are similar, but it is not exactly known.

REP. DELL asked if one aspect of the bill is to use the profits for new generation. **Mr. Maly** said that this is a new feature of the bill.

REP. DELL said there is a concern of having lag time of providing relief. **Mr. Maly** said that it could happen.

REP. FORRESTER commented that state generation facilities could be built from the account that is formed.

REP. STORY said that the bulk of the power is the short term and is in the contract. The only lag time would be with power used during off hours.

REP. DELL thinks that we need to move the bill forward.

REP. MOOD said that the bill essentially sets a cap at five cents, but he doesn't know how to feel about this bill.

REP. SCHMIDT is also unsure how to make a decision of where this will go because of the significant changes.

REP. DELL agreed saying that there are so many.

Vote: Motion **carried 7-1 with Schmidt voting no.**

Motion/Vote: **REP. MOOD** moved that **HB 474 DO PASS AS AMENDED. Motion carried 7-3 with Forrester, Matthews, and Schmidt voting no.**

EXECUTIVE ACTION ON HB 445

Motion: **REP. DELL** moved that **HB 445 DO PASS.**

Motion/Vote: **REP. STORY** moved that **AMENDMENT TO HB 445 BE ADOPTED. Motion carried 7-1 with Brown voting no.**

HEARING ON HB 474

Sponsor: REP. PAUL SLITER, HD 76, SOMERS

Proponents: Tom Daubert, Ash Grove Cement Company
Darrell Holzer, MT AFL-CIO
Gene Fenderson, MJH & HC

Opponents: Jerome Anderson, PP&L Montana

Opening Statement by Sponsor:

REP. PAUL SLITER, HD 76, SOMERS, opened by saying that HB 474, which has been changed and amended since its introduction, creates a windfall profits tax. The tax is imposed on the profits derived from the sale of electricity generated in Montana, for any portion over the base price of 5 cents per kilowatt hour, and the tax rate is equal to 90% of the windfall profits. The revenue would be deposited into a special revenue fund, and be used by the PSC to purchase or buy down the price of electricity as well as fund the low-income energy assistance program. He suggested the committee might want to adjust the 5-cent base price, given the instability of today's market. He also felt an exemption might be written into the bill with regards to federally generated power, citing as an example the Bonneville Power Administration. He pointed to Sections (3) through (7) and explained that the Board of Investments will have the ability to invest in new power generation projects in the state, such as the newly announced gas-fired generators that NorthWestern is planning.

Proponents' Testimony:

Tom Daubert, Ash Grove Cement Co., asserted that this was one of the large industrials who supported deregulation, and enjoyed quite a bit of savings during the first year under a new power contract, only to lose it and more in a single month after the initial contract expired. The decision to shut down temporarily was made a few months later because the company could not afford the price of electricity. He proclaimed his support for this bill and others for implementing measures which would provide relief from the sky-rocketing electric rates.

Darrell Holzer, MT AFL-CIO, also rose in support of HB 474, saying he was intrigued by any piece of the puzzle that might

help improve the current situation, and welcomed any proposal which would bring forth much needed new generation.

Gene Fenderson, MT Joint Heavy and Highway Committee, stood in support of HB 474 and hoped the 5-cent rate would become reality.

Opponents' Testimony:

Jerome Anderson, PPL Montana, expressed his concern with the proposal to impose an excess profit tax on power generated in Montana, and felt this was discriminatory and violated property rights. He also saw a problem for a generator selling electricity in Montana under contract, having to augment power generated in the state with power bought in the spot market. PPL Montana was one of those companies, having to pay between $100 and $400 per megawatt hour without any hope of being compensated. He felt HB 474 was punitive and singled out PPL Montana who had chosen to make a significant investment in Montana for years to come.

Questions from Committee Members and Responses:

SEN. ROYAL JOHNSON asked if there were any exemption clauses for other generators of power in Montana. **Jerome Anderson** replied there were none. **SEN. JOHNSON** wondered if the generators who own Colstrip 4 were included under the provisions of this bill. **Mr. Anderson** confirmed this.

SEN. JOHNSON asked, aside from the 90 union workers at Ash Grove, how many people this bill would affect. **Tom Daubert** replied that he had referred to all of Montana's workforce, not only the employees of Ash Grove, in his testimony.

SEN. DON RYAN asked the sponsor if different power generation methods, such as gas or coal fired generation, were considered when the threshold of $50 per megawatt hour was set. **REP. SLITER** responded that this price was arrived at arbitrarily. **SEN. RYAN** wondered why there was no termination date in HB 474. **REP. SLITER** explained that the termination date was eliminated with the amendments. He felt the market would stabilize over a period of time, and the windfall profits tax might not be an issue five years from now because, with increased competition, prices would come down. He left it up to the committee, though, to add a termination date. **SEN. RYAN** inquired if this bill would not achieve the opposite and be a dis-incentive to new generation if prices did not come down from the $50 level, because of the cost

involved in building a new plant. **REP. SLITER** stated he had thought about an exemption for new generation but felt HB 474 did not violate any commerce clause in statute. He maintained he would be in favor of such an amendment as long as it did not raise any legal questions.

SEN. JOHNSON referred to page 5, line 6, and asked if the money in the account would be given to the distributing power company. **REP. SLITER** explained that the money would be used to contract for power. If the PSC would enter into a contract with the default supplier, for example, the money in this special revenue account could be used to buy down the price of the contract, lowering the cost to the end consumer. **SEN. JOHNSON** wanted assurance that any power company would be entitled to this, and **REP. SLITER** clarified it was subject to the PSC entering into the contract with them, and it would not necessarily be the default supplier. **SEN. JOHNSON** referred to Section (3)and asked if this provided the Board of Investments the ability to invest in generating plants. **REP. SLITER** confirmed this. **SEN. JOHNSON** wondered if the board was prohibited from doing so now, and **REP. SLITER** replied he did not know.

SEN. TOM ZOOK wanted to be sure that this did not apply to new generation. **REP. SLITER** thought that it did, but felt that new generation could be exempted from this taxation if it could be worked out within the legal constraints. **SEN. ZOOK** questioned the fairness of exempting one company in addition to the investment made to bring it online, and penalizing another. **REP. SLITER** asserted that he was mainly concerned with fairness to the consumer, pointing to the windfall profits enjoyed by certain companies and, at the same time, dispelled the assumption that this was directed solely at PPL Montana.

SEN. MIKE TAYLOR questioned the time frame in Section (7), and **REP. SLITER** explained that the 15 to 25 year time frame was added through amendments but that he was not convinced it was the way to go, and would leave it up to the committee to adjust it. He maintained that because of the complexity of the issue, this bill was a "work in progress" and urged the members to use whatever tools were needed to make it a better bill.

SEN. ALVIN ELLIS understood that there were several companies who owned substantial interest in power generation in Montana besides PPL, and wondered what portion of that power was being sold on a market based price versus a regulated price. **REP. SLITER** thought that companies like Pacific Corp., Avista and Puget were generating power for their own use and selling it on the West

Coast. He felt HB 474 would affect them depending on the price they charged, but if they sold it at cost, it would not. **SEN. ELLIS** asked the same question of **Pat Corcoran, MPC,** who was not sure but thought it would be closer to being a cost based rate, except for a potential, albeit unlikely, surplus. He felt that power was being used to serve their existing loads at the current rate.

SEN. ELLIS inquired about deregulation in California, namely that the providers of power had to divorce themselves from the generators. **Pat Corcoran** confirmed this but stated that the power facilities located in Montana are serving utilities located in the Pacific Northwest, Oregon and Washington, primarily, and specifically their regional loads, and not in California.

{Tape : 1; Side : B}

SEN. MACK COLE inquired if the attached fiscal note had been revised as far as the general fund impact was concerned. **REP. SLITER** replied that now there was a .50 FTE for each year of the biennium. The general fund impact was due to administrative expenses.

Closing by Sponsor:

REP. SLITER closed on HB 474, saying this and other energy bills were works in progress, and he was open to anticipated amendments.

HEARING ON HB 632

Sponsor: **REP. DOUG MOOD, HD 58, SEELEY LAKE**

Proponents:
Michael Uda, Ash Grove Cement Co.
Pat Corcoran, MPC
Allan Payne, MRI, Ash Grove Cement Co.
Harley Harris, MRI
John Shaw, ASARCO
Eric L. Schindler, American Chemet Corp.
Greg Stricker, MRI
Patrick Judge, MEIC
Matthew Loew, MontPIRG
John Bloomquist, MT Stock Growers
Paul Wyche, NorthWestern Corp.
Barry Hederich, self
Robert Hanson, MT Farm Bureau
John Youngberg, MT Farm Bureau

SEN. ZOOK asked where MDU generated electricity in state. **SEN. MCNUTT** told him their plant was near Sidney. He added that he strongly opposed MDU being subject to this tax because they were on a different power grid and had nothing to do with the reason for this bill. He asserted that if his proposed amendment did not pass and MDU would not be exempt, he could not vote for HB 640. **SEN. ZOOK** agreed, saying they were not a part of the problem.

Vote: Motion **carried 4-2 with Halligan and Ryan voting no.**

SEN. HALLIGAN wondered if the committee could get a grey bill.

Motion/Vote: **SEN. STAPLETON** moved that **HB 640 BE CONCURRED IN AS AMENDED. Motion failed 1-6 with Stapleton voting aye, with SENS. DOHERTY AND MCCARTHY voting no by proxy.**

EXECUTIVE ACTION ON HB 474

Todd Everts stated that two sets of amendments had been adopted, **EXHIBIT(ens80a04)**, #HB047401.ate, and **EXHIBIT(ens80a05)**, #HB047402.ate, and he had a new set which also handed out, **EXHIBIT(ens80a06)**, #HB047403.ate. He explained that Amendment #HB047403.ate stripped the windfall profits tax from the bill which made Amendment #HB047402.ate obsolete as well as item #4 on Amendment #HB047401.ate.

Motion: **SEN. MCNUTT** moved that **AMENDMENT #HB047403.ATE BE ADOPTED.**

Discussion:

SEN. ZOOK asked what was left of the bill since its most important provision was eliminated. **SEN. HALLIGAN** echoed his concern. **Mr. Everts** pointed to Sections (3) through (7) and said that was the bill now, creating either 250 megawatts from new generation or purchase up to 120 megawatts from qualifying facilities, with the new generation facility to be completed by July 1, 2003.

Vote: Motion **carried 6-0.**

Motion/Vote: **SEN. MCNUTT** moved that **HB 474 BE CONCURRED IN AS AMENDED. Motion carried 6-0.**

Note: A combined set of amendments, #HB047403.ate, **EXHIBIT(ens80a07)**, was submitted the following day.

ADJOURNMENT

Adjournment: 2:30 P.M.

SEN. MACK COLE, Chairman

MARION MOOD, Secretary

MC/MM

EXHIBIT(ens80aad)

Amendments to House Bill No. 474
3rd Reading Copy

Requested by Representative Paul Sliter

For the Senate Energy and Telecommunications Committee

Prepared by Todd Everts
April 9, 2001 (8:23AM)

1. Title, page 1, line 21.
Following: "SUPPLIER;"
Insert: "MODIFYING THE DEFAULT SUPPLIER LICENSING RULES;"
Strike: "SECTION"
Insert: "SECTIONS"

2. Title, page 1, line 22.
Following: "69-8-201"
Insert: "AND 69-8-416"

Senate Energy & Telecomm.Comm.
Exhibit No. 4
Date 4-9-01
Bill No. HB 474

3. Page 4, line 17.
Strike: "THERE"
Insert: "Except as provided in subsection (2), there"

4. Page 4.
Following: line 19
Insert: "(2) The following entities are exempt from the tax imposed in this section:
(a) an agency of the United States government that produces electricity in the state of Montana; and
(b) a qualifying facility as used under the Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a-3."
Renumber: subsequent subsections

5. Page 7, line 15.
Strike: "small"
Following: "customers"
Insert: "described in subsections (1)(a) and (1)(b)"

6. Page 8.
Following: line 6
Insert: **"Section 9.** Section 69-8-416, MCA, is amended to read:
"69-8-416. Default supplier license. (1) In developing

licensing rules for default suppliers, the commission shall promote and facilitate the development of a competitive market for electricity supply.

(2) Default supplier licensing rules must ensure that:

~~(a) a default supplier may not purchase electricity for or sell electricity to commercial or industrial electric consumers having individual accounts with an average monthly demand in the previous calendar year of 100 kilowatts or more or to new commercial or industrial electric consumers having individual accounts with an estimated monthly demand of 100 kilowatts or more;~~

~~(b)~~ (a) a default supplier may not discount its commission-approved rates to retain or gain customers;

~~(c)~~ (b) a default supplier may not obligate customers to a contractual term or service;

~~(d)~~ (c) federal power marketing administration power or benefits acquired by a default supplier are distributed as widely and equitably as possible among small customers and in a manner that encourages competition;

~~(e)~~ (d) a default supplier, except when the default supplier is the distribution services provider, may not construct, purchase, take, receive, or otherwise acquire or own, hold, equip, maintain, or operate electric generating plants or transmission or distribution lines or systems, except that a default supplier may enter into transmission or distribution agreements for the lease or use of capacity on transmission and distribution systems owned by others to supply electricity to its customers in the state;

~~(f)~~ (e) a default supplier may not offer for sale any products other than electricity supply or provide electricity supply to members or customers other than those residing in the state or sell electricity or otherwise engage in the marketing of electricity on the wholesale market, but may dispose of excess electricity associated with temporary load-energy imbalances.

(3) Except as provided in subsection ~~(2)(e)~~ (2)(d), a default supplier may provide only a single electricity supply service to all of its small customers. A default supplier may also offer an additional electricity supply service that includes a component of renewable energy.

(4) A default supplier may not offer other supply services unless the default supplier forms a separate entity."

{Internal References to 69-8-416: 69-8-403X }"

Renumber: subsequent sections

- END -

Amendments to House Bill No. 474
3rd Reading Copy

Requested by Senator Mike Halligan

For the Senate Energy and Telecommunications Committee

Prepared by Todd Everts
April 9, 2001 (8:23AM)

1. Page 5, line 8.
Strike: "THE LOW-INCOME ENERGY ASSISTANCE PROGRAM PROVIDED FOR IN 69-8-412"
Insert: "universal system benefits programs provided for in Title 69, chapter 8"

- END -

Senate Energy & Telecomm.Comm.
Exhibit No. 5
Date 4-9-01
Bill No. HB 474

Senate Energy & Telecomm.Comm.
Exhibit No. 6
Date 4-9-01
Bill No. HB 474

Amendments to House Bill No. 474
3rd Reading Copy

Requested by Senator Fred Thomas

For the Senate Energy and Telecommunications Committee

Prepared by Todd Everts
April 9, 2001 (11:36AM)

1. Title, page 1, line 5 through line 7.
Strike: "CREATING" on line 5 through "ASSISTANCE;"

2. Title, page 1, line 13 through line 15.
Strike: "AUTHORIZING" on line 13 through ";" on line 15

3. Title, page 1, line 23 through line 24.
Strike: the first "; AND" on line 23 through "DATE" on line 24

4. Page 4, line 17 through page 5, line 8.
Strike: sections 1 and 2 in their entirety
Renumber: subsequent sections

5. Page 5, line 10.
Strike: "[3 THROUGH 7]"
Insert: "[1 through 5]"

6. Page 5, line 17.
Strike: "[3 THROUGH 7]"
Insert: "[1 through 5]"

7. Page 5, line 24.
Strike: "[3 THROUGH 7]"
Insert: "[1 through 5]"

8. Page 5, line 27.
Strike: "[SECTION 7]"
Insert: "[section 5]"

9. Page 6, line 11.
Strike: "[SECTION 7]"

Insert: "[section 5]"

10. Page 6, line 20.
Strike: "[SECTION 6]"
Insert: "[section 4]"

11. Page 12, line 18 through line 23.
Strike: "(1)" on line 18 through "7]" on line 23
Insert: "[Sections 1 through 5]"

12. Page 12, line 24.
Strike: "[SECTIONS 3 THROUGH 7]"
Insert: "[sections 1 through 5]"

- END -

ENS Ex 7
4-10-01
HB 474

Amendments to House Bill No. 474
3rd Reading Copy

Passed Combined Amendments

For the Senate Energy and Telecommunications Committee

Prepared by Todd Everts
April 9, 2001 (3:17PM)

1. Title, page 1, line 5 through line 7.
Strike: "CREATING" on line 5 through "ASSISTANCE;"

2. Title, page 1, line 13 through line 15.
Strike: "AUTHORIZING" on line 13 through ";" on line 15

3. Title, page 1, line 21.
Following: "SUPPLIER;"
Insert: "MODIFYING THE DEFAULT SUPPLIER LICENSING RULES;"
Strike: "SECTION"
Insert: "SECTIONS"

4. Title, page 1, line 22.
Following: "69-8-201"
Insert: "AND 69-8-416"

5. Title, page 1, line 23 through line 24.
Strike: the first "; AND" on line 23 through "DATE" on line 24

6. Page 4, line 17 through page 5, line 8.
Strike: sections 1 and 2 in their entirety
Renumber: subsequent sections

7. Page 5, line 10.
Strike: "3 THROUGH 7"
Insert: "1 through 5"

8. Page 5, line 17.
Strike: "3 THROUGH 7"
Insert: "1 through 5"

9. Page 5, line 24.

Strike: "3 THROUGH 7"
Insert: "1 through 5"

10. Page 5, line 27.
Strike: "[SECTION 7]"
Insert: "[section 5]"

11. Page 6, line 11.
Strike: "[SECTION 7]"
Insert: "[section 5]"

12. Page 6, line 20.
Strike: "[SECTION 6]"
Insert: "[section 4]"

13. Page 7, line 15.
Strike: "small"
Following: "customers"
Insert: "described in subsections (1)(a) and (1)(b)"

14. Page 8.
Following: line 6
Insert: **Section 7.** Section 69-8-416, MCA, is amended to read:

"**69-8-416. Default supplier license.** (1) In developing licensing rules for default suppliers, the commission shall promote and facilitate the development of a competitive market for electricity supply.

(2) Default supplier licensing rules must ensure that:

~~(a) a default supplier may not purchase electricity for or sell electricity to commercial or industrial electric consumers having individual accounts with an average monthly demand in the previous calendar year of 100 kilowatts or more or to new commercial or industrial electric consumers having individual accounts with an estimated monthly demand of 100 kilowatts or more;~~

~~(b)~~(a) a default supplier may not discount its commission-approved rates to retain or gain customers;

~~(c)~~(b) a default supplier may not obligate customers to a contractual term or service;

~~(d)~~(c) federal power marketing administration power or benefits acquired by a default supplier are distributed as widely and equitably as possible among small customers and in a manner

CHAIRMAN MCNUTT told the committee that some time ago, he had asked the Consumer Council to do a profile on HB 632, and asked if **Bob Nelson** was in the audience.

{Tape : 1; Side : B}

Bob Nelson, Consumer Council, claimed he did not know the current status of HB 632, and his remarks would have to be generic. He stated their concern was with the negative impact returning customers would have on the remaining customers' rates, saying they would like to see some protection applying to the existing customers. As he read the bill, there would be two categories of returning customers, those who could return under the lifelines rates and those who could return by electing default supply service, with the lifeline rate customers being served at 150% of applicable rates; he presumed the others would be served at 100% of the default rates and had to agree to permanent service in return. The Council had some concerns with the cost recovery provisions; he mentioned leaving subsection (8) in the bill, because he believed 69-8-211 to be important to the commission's assertion of authority to control the rates charged by the generators.

CHAIRMAN MCNUTT informed him that the amendments proposed this morning struck the entire Section, and subsection (8)was now out of the bill.

VICE CHAIRMAN MOOD had a difficult time hearing what **Bob Nelson** had said about two classes of customers, and asked him to repeat it. **Mr. Nelson** referred to the provisions on page 9, lines 14 to 18 and repeated what he had said before, adding that it did not say what the rate would be, and he had presumed it would be the default supply rate. **VICE CHAIRMAN MOOD** informed him that Subsection (6) had been stricken earlier in its entirety.

REP. ROY BROWN asked whether subsection (8) on page 13 was also struck. **VICE CHAIRMAN MOOD** explained that by taking out that section it left it as it was in current law.

HB 474

Greg Petesch, Legislative Branch, introduced **Amendment #HB047402.agp, EXHIBIT(5)** saying because it amended an amendment adopted yesterday, the change was shown in bold text under subsection (5); it allowed the Department of Administration to recover the cost of administering the consumer electricity support program from the consumer electricity support account. This mechanism had been requested by the DOA.

Motion: **Chairman McNutt MOVED THAT AMENDMENT #HB047402.ATE BE ADOPTED.**
Vote: **Motion carried** with **three Representatives** and **two Senators voting aye.**

CHAIRMAN MCNUTT introduced **Amendment #HB047406.agp, EXHIBIT(6)** which he had requested in an attempt to protect the default supplier.

Mr. Petesch stated that some of the concepts in these amendments were similar to the amendments requested by **REP. DELL**, and they were now melded into the right bill. He pointed out that the major change was that these amendments designated a customer's distribution service supplier as the default supplier; it also repealed some language dealing with default supply licensing of various entities because it was no longer necessary. The definition of electricity supply cost on page 2 of the amendments remained the same; the transition period ended on July 1, 2007 to conform with amendments made to SB 19; item #8 specifically provided that the distribution services provider had an ongoing, regulated default supply obligation beyond the end of the transition period. Amendment #9, subsection 4 (a) was identical to a previous amendment dealing with procedures for choosing the default supplier, and the remainder dealt with the option for opting in and out of default supply, securing an orderly procedure for this process, including prior notification of the default supplier, and the stipulation of the five year contract. He went on to say that item #11 dealt with the duties of the default supplier, such as procuring the portfolio, commission approval of contracts with a 15 day time frame instead of the 30, as well as the two options with regards to either pre-approval of contracts or procuring supply without the commission review and then having the contracts subject the commission's prudency analysis as discussed earlier. The mechanism with regards to the full cost recovery had to be adopted by the commission before March 30, 2002, and the repealed sections dealt with the buying cooperative being licensed as a default supplier, and the licensing and license revocation sections since the default supplier was now named.

VICE CHAIRMAN MOOD asked if his last comment referred to page 8 of the amendments. **Mr. Petesch** replied what was stricken on page 8 dealt with customer choice and was stricken because it was in conflict with the new language regarding opting in and out.

CHAIRMAN MCNUTT called on a representative from MPC or NorthWestern to comment on these amendments.

Pat Corcoran, MPC, proclaimed that both MPC and NorthWestern supported these amendments as presented. He felt they had come a long way since SB 243, and they felt comfortable with these provisions.

CHAIRMAN MCNUTT stated that **Mike Hanson, NorthWestern,** had expressed some concern about their generation and what portion of it was going to be used to pay down those asset costs, that maybe this language might require all of the money to flow back into the rates. He asked **John Hines** to comment on this.

John Hines, Northwest Power Planning Council, referred to Section 4(a) on page 9 of the amendments which stated that the commission shall use an electrical cost mechanism that ensured all electricity supply costs approved by the commission shall be recoverable in rates, and said that those costs are defined on page 2. In his opinion, this said that any revenue which occurred because of sales not to the default supplier customer base should be netted back against the costs of providing the default supplier. He offered that "sale of surplus electricity" could be further defined to accommodate NorthWestern's needs.

Dennis Lopach, NorthWestern Corp., asserted that **Mike Hanson's** concern was with the last sentence of subsection (12) on page 2, that it could be construed to include sales by the entity that will own the natural gas generators which will be separate from the entity housing the default supplier. He would like it to read "revenue from the sale of surplus electricity by the default supplier must be deducted from the included costs".

Patrick Judge, MEIC, stated that if the committee specified that the distribution utility act in the role of default supplier and that the small customer buying cooperative would not be allowed to function in that capacity, he urged to look at section 35-19-104 which limited the small customer cooperative to act only in the capacity of a default supplier, and strike that section to be consistent with the other changes. **Mr. Petesch** replied that this section had been amended and allowed them to act as an aggregator and if they both passed, they would be allowed to be a supplier other than the default supplier, or the aggregator of green power.

Mike Uda, Ash Grove Cement Co., charged that there were three reasons why these amendments should not be adopted. He stated first off that the drafters of HB 632 had worked very hard to make sure that the language in SB 390 was preserved so as to not interfere with the commission's jurisdiction. In statute right

now was a provision saying that the default supplier had to be held whole. Assuming there would be litigation and the question arose whether these amendments were consistent with what HB 632 wanted to achieve, he would say that MPC and NorthWestern would face a similar uphill battle because if they had believed all along that they had the right to full cost recovery, why the need for all these amendments. Thus, from their standpoint, these amendments should not be adopted. Secondly, the language in the cost recovery mechanism was inconsistent with current law and the affirmation of commission jurisdiction. The third point was that there was a huge difference between saying that the default supplier had to assume some risk for bad decisions, and bankruptcy. He admitted it was a balancing act, having the default supplier assume some risk but not all the risk, but that exactly this was done by the PSC, on a daily basis, making all kinds of decision regarding utilities, allocating risk between shareholders and ratepayers. He alluded to **SEN. ELLIS'** concern that in the trading business, sometimes we do not have 15 or 30 days to make a deal, and nobody was saying that we are insulated from any risk because of a bad deal. He felt that having only 15 days for an important decision about what costs the customers should be paying put the commission in a difficult position, having to determine what was just and reasonable in such a short amount of time. Moreover, "just and reasonable" was not defined in statute; what statute did attempt to do was to balance the interests of ratepayers and shareholders. In closing, he said that these amendments may be tying the hands of the commission and putting consumers at great risk.

CHAIRMAN MCNUTT stated that he had worked on both the TAC committee and the Consumer Council, and had been told repeatedly if someone went out for a contract for a block of power and the offers came back, one was not given a perpetuity to make a decision; most of them needed to be made in fifteen days or less. In this regard, he did not understand why that language would impair the PSC, with this being industry practice regarding the length of time most offers were on the table.

{Tape : 2; Side : A}
Mike Uda felt this was an excellent question with regards to the contracts, but the real question was whether, after having only fifteen days, the decision became unchallengeable, and whether the commission should be put in that position. He felt the utilities wanted to be protected from a decision they may have made, giving the commission fifteen days to determine whether or not it was suitably protective of ratepayers. He charged that they could enter into those contracts now; what they did not have

now was protection from liability in the event they made a bad decision, and that was what this attempted to accomplish.

Donald Quander, Montana Large Customer Group, surmised that if the intent was to ensure no customers larger than one megawatt would return to the system, the amendments certainly accomplished that goal. He understood that the decision to opt in beginning July 1, 2002 had to be made within the next few months, and the customer had to agree to stay for the entire five year period, subject to the 10% of the total load being phased out at the end. He referred to 3(b) and (c) on page 9, saying he agreed with **Mr. Uda** that this was inconsistent with a meaningful commission review because it did not allow time for third parties to comment or even for the commission to give it adequate consideration. He felt it was an empty exercise to ask the commission to require to approve or reject a contract within fifteen days; if they rejected it, they had to explain the basis, and if they approved, the last sentence in (8) on page 14 came into play which said "Approved electricity supply costs are considered to be just and reasonable rates". This meant that the supplier had an opportunity to enter into a contract, and then may elect to submit this for pre-approval by the commission or not; if they choose to submit it, the commission must accept or reject within fifteen days, and if approved, it would be presumed to be just and reasonable and not subject to challenge later, as **Mr. Uda** had described. He felt this was a policy choice, but he wanted to elaborate on two longstanding touchstones of utility law; one was just and reasonable rates which not only protected the customer but also allowed a reasonable rate of return for the utility, and the second was the traditional prudence review. These had come about because traditionally, utilities had urged that these were business decisions for them to make, and that they could not be delayed by commission approval or reaction; he concurred, saying this was a fast moving market and decisions needed to be made promptly. He believed utilities were able to do this under current law, and to the extent that this bill reinforced this concept, there was no harm done. He stressed, though, as had **Mr. Uda,** that the consequence of this had changed. Traditionally, a company made a business decision, submitted it to the commission and established that it was prudent; subsequently, they were entitled to recover that cost as well as earn a reasonable return. Now this bill required pre-approval which has been the holy grail of the utilities for 75 years; it is the "hold harmless" provision which meant they could get the commission to immediately pre-approve their costs so they would not be at risk. This has never been the case anywhere, and he cautioned that the committee should not be fooled by the idea that calling a utility

the default supplier changed this, traditional utilities were default suppliers by definition; they were obligated to go out and get supply for their customers. Some of them owned generation, others did not and had always been in the market buying for their customers, and there was no special new risk associated with this activity. In closing, he charged that the default supplier should not be more at risk than other utilities were but neither should they be less at risk, neither should they have no stake at the table. He feared that this bill went too far in not simply assuring a right they already had, namely reasonable cost recovery, but in fact guaranteeing something no one had ever been granted. He recommended that the committee rely on the language in 3(d) on page 9 which reflected the prudence test which was law; prudence review meant that a utility's decision could not be second-guessed but that only the facts that were known or should reasonably have been known would be considered, and this protected the utility under current law.

He apologized for the length of his comments but due to the seriousness of the amendments, he felt he needed to address these issues.

Holly Franz, AsiMI, focused on item #9 on page 7, which was the long version dealing with the way large customers could opt in and opt out, and recommended that the committee consider the short version. She thought it appropriate that the commission established a reasonable process where someone could opt in but did not have to stay in for the whole five years; she referred to testimony with regards to LP's five year contract which excluded each third quarter, and said that under this bill, they could not opt in for a quarter each year. She felt that as long as it did not cost anyone else anything, LP or anyone should have that option. She also objected to the requirement that notice be given within 60 days, even if a company's supply contract did not expire for two more years, and that they had to enter into a five year contract with the default supplier.

REP. BROWN argued that a lot of these amendments dealt with the default supplier recovering the full cost, even though this was already in statute, referring to 69-8-210, and asked for an explanation why all these amendments were needed.

Dennis Lopach, NorthWestern, stated that he was correct, existing law did provide for full cost recovery. He felt, though, that putting a concept into practice could be a time consuming and uncertain process; the power being exercised by the PSC was legislative power, and he believed that if one intended for a

result, it was appropriate to use the language accomplished that goal; these amendments accomplished the result intended in existing law, and this provided some certainty for the default supplier and its financing entities that presumably the intent was to keep them whole, where they could borrow money at a reasonable cost. Absent this legislation, this result would be uncertain.

REP. BROWN asked **Mr. Petesch** if he agreed that current law was sufficient, or was all this additional language necessary. **Mr. Petesch** answered this was a difficult question; he felt that current law specified full cost recovery but did not specify what full cost recovery meant, and therein lay the crux of the debate. The PSC assured the utility that the methodology spelled out in the law was what they used, but the default supplier was not convinced that absent the additional language, the result would be the same and therefore, they were seeking additional statutory assurance. **REP. BROWN** referred back to Subsection (8) on page 14 and asked how this allowed public input into what was a just and reasonable rate, given the fifteen day time frame the PSC had. **Mr. Lopach** felt there was ample time, once the PSC knew an RFP was in process, for it to provide an opportunity for public input before it made a decision. In looking at the last sentence in Subsection (8), he felt it was not necessary in the context of the overall amendments.

REP. DELL wondered what would compel the default supplier to obtain the best deal for his customers when all his costs were covered and there was no inherent risk. He repeated that the answers he had been given previously dealt with the importance of a customer base and economic health but in light of these amendments which took away all risk, he needed to ask again. **Bob Nelson, Consumer Council,** felt a response should come from MPC and NorthWestern. He recalled **Mr. Hanson's** response and it made sense to him that they did have some interest in the economy because it could have an impact on their business. He concurred with **Mr. Quander** that the traditional commission regulation such as the prudence review and the absence of pre-approval were intended to invoke some kind of cost discipline on incurrence of cost by regulating utilities, and claimed that these amendments significantly weakened that cost discipline.

David Hoffman, PSC, felt it was time the commission weighed in on some of these comments, and stressed that the commission's position was in agreement with the comments made by **Mr. Uda** and **Mr. Quander** with regards to these amendments. They created an internal inconsistency in Chapter 8 by establishing a new type of

review which was very limited and based on the approval or rejection of the portfolio of contracts; this abrogated the commission's typical regulatory method to determine a rate based on cost of production, and the commission had to rely on the existing language in Chapter 8 to assert their authority, and in particular the language in 210 as **REP. BROWN** had pointed out. The PSC agreed that cost recovery was contained in Section 210, and that it was adequate. He understood NorthWestern's concern that they would want to leave here knowing they will obtain full cost recovery for the price of the contracts they may enter into, and he stressed that the commission's position has been consistent that it had an obligation not only to the consumer but the utility as well through this balancing process in regulating rates, to preserve the financial integrity of the utility. He charged that it was not the commission's intent to push the utilities to the verge of bankruptcy, but they were concerned that the language in these amendments created this inconsistency which in effect made their position in asserting statutory authority moot. In closing, he informed the committee that the commission's economist, **Will Rosquist**, was also available to answer further questions.

CHAIRMAN MCNUTT asked the members to take a look at both the long and the short versions of the opt in/opt out amendments and compare them.

{Tape : 2; Side : B}
He reminded that committee that the short version was **Amendment #HB047405.agp**, introduced the previous day, and said for those who had **Amendment #HB074706.ate,** item #9 on page 7, it would retain 4 (a)and strike the remainder of the section.

SEN. ELLIS wanted to know the rationale for the additional language in the long version; he felt it set up a very detailed procedure for the commission.

Pat Corcoran, MPC stated that the short version merely allowed the PSC the discretion to establish the requirements for all customers coming in and leaving; the long version had specific language relating to the large industrial customers because there was some concern due to the size of the loads for those large customers and the contract commitments the default supplier had to make in advance on their behalf; the portfolio had to be managed in such a way as not to put the rest of the customers at risk with the total cost remaining if the large customers left.

He felt, though, that there were relevant provisions in the short versions as well.

CHAIRMAN MCNUTT stated that this set some very stringent criteria with regards to opting in and opting out, and again referred to LP's unique situations, asking how they would accommodate that. **Mr. Corcoran** assured him they were not opposed to the shorter version, knowing that situations like LP's did exist.

SEN. ELLIS asked **Will Rosquist** to comment on this comparison. **Will Rosquist, PSC,** admitted he had not seen either version of the amendments. **SEN. ELLIS** stated that the short version was Subsection (4) of the long version, and the long version was the complete amendment, item #9 on page 7. **Mr. Rosquist** asserted that the commission had not had a chance to meet on this, so he would be offering his own comments. Consistent with the commission's desire was to rather have more flexibility than less in implementing the statute, and he was sure the commission would be very comfortable in having the short version, allowing them to set the terms on conditions under which customers would be able to return by giving those customers flexibility while also recognizing the concerns of the default supplier. **SEN. ELLIS** agreed with him.

REP. DELL felt there was consensus to substitute the shorter version for the long version even though he was still wrestling with the issue, thinking that giving the PSC too much discretion would create problems in the long run.

CHAIRMAN MCNUTT argued that the committee had proposed this to set some guidelines to get things done. His concern was that the PSC had maintained all along that they had the authority but it appeared that in certain situations, it was not getting done, and he wanted assurance from them that they could accomplish what they set out to do. He asked **Will Rosquist** to comment on this.

Mr. Rosquist stated it would be appropriate to give the PSC a deadline to ensure things got done. **CHAIRMAN MCNUTT** asked if they were given ten days, could they get it done in that time. **Mr. Rosquist** claimed that was a bit short, with which **CHAIRMAN MCNUTT** agreed.

VICE CHAIRMAN MOOD asked to segregate some of these items so they could be voted on separately, especially this particular section. **CHAIRMAN MCNUTT** concurred, suggesting to separate item #9 and strike (b).

Motion: **Sen. McNutt MOVED THAT SECTION (9) BE SEGREGATED AND (B) AND THE REST OF THE SECTION BE STRICKEN.**
Vote: **Motion carried** with **three Representatives** and **two Senators voting aye.**

REP. BROWN felt it would be appropriate that these procedures be available by the effective date of the bill which was July 1, 2001.

In response to **CHAIRMAN MCNUTT's** question, **Greg Petesch** stated this could be accommodated, making this subsection effective on passage and approval and require the rules to be in place no later than July 1, 2001.

Motion: **Sen. McNutt MOVED THAT THE CONCEPTUAL AMENDMENT BE ADOPTED.**
Vote: **Motion carried** with three **Representatives** and **two Senators voting aye.**

REP. BROWN reminded the committee of their discussion with regards to the last sentence of Section (8) on page 14 and asked to have it struck.

Motion: **Sen. McNutt MOVED TO STRIKE THE LAST SENTENCE OF Subsection (8) on page 14.**

Discussion:

SEN. ELLIS thought this was a protection clause and asked for the rationale behind this request. **REP. BROWN** explained he was concerned because it talked about approved electric supply cost without giving the public or any third parties the opportunity to have any input as to whether they felt them to be just and reasonable.

SEN. ELLIS felt that the environment the PSC worked in was one of garnering comment, and if this was stricken, it would create a vulnerability for the PSC, making them reluctant to take action.

REP. BROWN asked someone from the PSC to speak to this. **David Hoffman, PSC,** agreed with **REP. BROWN's** assessment. He said both **Mr. Uda** and **Mr. Quander** had touched on this when they said it created a presumption that the pre-approval of the contract was in fact a just and reasonable rate, and could adversely affect a potential later challenge.

SEN. ELLIS asked him to assume that a company came to the PSC with a contract and it was approved, and someone successfully challenged it; would that not leave the default supplier hanging. **Mr. Hoffman** answered that it could but maintained this language shifted the burden to make it difficult to challenge.

SEN. ELLIS agreed, and **Mr. Hoffman** told him that was why the PSC opposed it.

CHAIRMAN MCNUTT asked if there was a rate hearing and the commission approved the rate, the underlying factor was that they were deemed just and reasonable once the decision was made. **Mr. Hoffman** commented that the process involved an analysis of a lot of information in order to arrive at a rate, and it could be looked at conceptually as pre-approval because they considered the rate first. Based on what these contracts may contain, if they did not have a good reason to reject them and could not articulate that reason in a defensible way, they would have to accept the contracts, which created the presumption that those rates were just and reasonable.

CHAIRMAN MCNUTT wondered if the PSC looked only at the electrical component of the default supply, what else would they be considering besides these rates. **Mr. Hoffman** replied that under the service provided, there were other regulatory aspects entering into it, such as the quality of service. Their attempt in asserting their authority was to continue, through the transition period of July 1, 2004, to regulate that component of the rates which they called the retail generation which is electricity generated by those assets that have not yet been separated from the rate base and which have been purchased by PPL Montana. **CHAIRMAN MCNUTT** ascertained that the commodity the default supplier handled was electrons and had nothing to do with transmission, distribution, or service; they were going to buy electricity and sell electricity, and he asked what other things they were involved in. **Mr. Hoffman** deferred that question to **Mr. Rosquist**.

{Tape : 3; Side : A}
CHAIRMAN MCNUTT repeated his question, saying the committee had to make a decision on whether or not to strike that last sentence in Subsection (8). **Will Rosquist** answered that their concern was not with the just and reasonable standard, it was being able to adequately determine whether the actions of the default supplier were prudent. This was done through rate proceedings where they provided affected parties with due process and gave the commission input on their actions. The crux of their concern was

the impact of that statement as it related to the ability to provide sufficient due process for the prudence review.

SEN. ELLIS related this to his cattle trading business, saying a lot of homework went into their decisions, the bids were of very short duration, and sometimes, outside circumstances could affect the market so dramatically that they would have to make a quick decision on whether to accept or reject those bids. Going back to the issue at hand, he objected to the idea that someone could come in after a decision had been made and challenge it, when the default supplier had been approved by the commission, creating a situation where it was almost impossible to act. **Mr. Rosquist** pointed out there were some differences between the two businesses, with the default supply function being a monopoly, and that was why the commission existed. He conceded that it was up to the legislature to determine whether or not they wanted the default supplier overseen by the PSC.

SEN. ELLIS concurred that the default supplier was a monopoly, but stated their monopoly lay in providing the service; that service involved the infrastructure which delivered the product, the metering of that product and various other aspects of getting that product, which they not necessarily produced themselves, to the customer. Moreover, the price of this product was much more volatile, having increased a hundredfold at the end of last year from what it had been in the beginning. He felt this issue had to be addressed quickly, and that this sentence was necessary.

Donald Quander went back to his concern, stressing that the existing, traditional prudence review did not allow the commission to secondguess a business decision that had been made based on information that only became available after the decision was made, that would be very unfair; what the prudence review involved was the commission looking at the information that was available to the business at the time they made the decision. He agreed that it would be unfair to demand, after the fact, that they should have anticipated changes in the market. The idea was to respect a business decision that had been made, and not hindsight.

SEN. ELLIS wondered why a determination by the PSC should then be subject to further contest. **Mr. Quander** explained that once the PSC had made the determination that a decision was prudent, it was presumed to be just and reasonable, and a third party challenging this in court had to bear the burden of proving that the commission acted arbitrarily. He felt that the difficulty was not with the contested sentence, but with putting it together

with the requirement that the determination be done in fifteen days. There was a potential risk that they might not have all the information to make the approval, but once it was made, it was deemed to be just and reasonable.

VICE CHAIRMAN MOOD surmised that the just and reasonable standard would be applied by the commission if they were setting the rate themselves; on the other hand, the prudence review was what they applied when a rate was proposed to them. To him this meant that in one instance, the commission was making the decision and in the other instance, they were merely passing on a contract. **Mr. Hoffman** agreed with this assessment as well as with **Mr. Quander's** statement. He stressed that elimination of this sentence would not affect the commission's standard of review when it set rates; what it did was change the standard of review in looking back on a contract which had been entered into, eliminating the prudence review. Currently, the contract price was deemed just and reasonable because the commission had fifteen days to look at it and approve it.

VICE CHAIRMAN MOOD wondered, with that sentence in the bill, were they not making the assumption that a profit margin, for instance, was reasonable when this did not fall under the consideration of prudence when looking at a contract. **Mr. Hoffman** stated this touched on the concept of pre-approved rates because the contract price would be the leading factor in determining rates; he added that there were other factors to consider over and above the price of the contract, and the "just and reasonable" standard needed to be applied to those as well.

Mike Hanson, NorthWestern, referred to the various roles of the default supplier, MPC. He said that being the delivery company was one role, namely that of maintaining reliability and directly serving the customers. Another role was being defined now, namely that of the default supplier, and this was an intermediary procuring power on behalf of consumers who did not choose to procure for themselves in this volatile market. He repeated that this was not a role his company had sought but would accept. He argued that as default supplier, they had created a role which included participation by the commission and the Consumer Council. He hoped these would participate on a pro-active basis, and stressed again that this was a volatile market and decisions needed to be made quickly. He asked the committee to determine whether the default supplier could operate in the current market environment as the middleman and finance his purchases without these amendments; he thought it would be difficult and perhaps impossible.

SEN. ELLIS wanted to suggest different language because he had concerns about striking the sentence altogether; he felt that anything which delayed the decision to act on a contract would add to the costs. He was concerned about jeopardizing the decision and creating a hesitancy, not only on the part of the PSC but on the part of the default supplier as well.

REP. BROWN went back to the senator's cattle business, speculating that he had an agent buying the cattle for him, and had to make a quick decision; it turned out later that not only did he pay too high a price but he had also sold him his own cattle; it was easy to see where there could be a conflict. He stressed he was not applying this to the situation at hand because he knew that both MPC and NorthWestern were good and reputable companies, but cautioned there was a fine line here between giving them carte blanche, that they were not held accountable for anything they did because "approved electric supply costs are considered to be just and reasonable". He stressed that it also applied to more than just electrons because of the definition of electric supply costs, and charged that if that sentence was left in, we would be leaving them completely harmless for anything they did which should have been done differently. He stated that we needed to give the PSC the discretion of allowing the public or a consumer to say that a decision was not prudent, and the utility should have to bear some of the responsibility for their actions. He wanted to remove the above sentence for that reason.

REP. DELL suggested to vote on this motion since it seemed everyone had made their decision.

Vote: **Motion carries** with **three Representatives** and **two Senators voting aye; Sen. Ellis voted no** and **Sen. Ryan voted aye by proxy.**

With that, the meeting was adjourned until 1 p.m.

{Tape : 3; Side : B}
CHAIRMAN MCNUTT called the meeting to order at 1:05 p.m., and invited questions from the committee on a previously discussed **Amendment #HB047406.ate**, Exhibit (6).

Motion: **Rep. Dell moved THAT AMENDMENT #HB047406.ATE BE ADOPTED.**
Vote: **Motion carries** with **two Representatives** and **three Senators moving aye; Vice Chairman Mood voted no.**

Motion: **Rep. Brown MOVED THAT AMENDMENT #HB047410.ATE, EXHIBIT(7), BE ADOPTED.**

Discussion:

REP. BROWN reiterated that HB 474 created an opportunity for new energy projects, and item #1 changed the limitation from 250 megawatts to 450; item #2 defined "Montana industry" as one located in the state and having consumed more than 5 megawatts on average during the last 12 months. He claimed the main reason for these amendments was to add these companies in with the default supplier and other qualified facilities, and it encouraged development of new generation. He felt that most contracts discussed here were short-term, and thought if someone went out and built a large facility, they would want some long-term rates to secure their investment. He invited people in the audience to speak to this, knowing that some represented coal-fired plants could be affected by this.

Todd Everts stated that he did well explaining his amendments, and added that sections (1) through (5) of HB 474 set up a program through the Montana In-State Investment Act for the Board of Investments to provide low-interest loans. These amendments created an incentive to facilitate up to 450 megawatts, and by including the term "Montana industry", it created the ability of an entity to collateralize that loan, either through the sale to the default supplier or a Montana industry as defined.

SEN. ELLIS wondered how long this allowed the default supplier to contract for this power. **REP. BROWN** explained he had the option to contract for as long as he wanted; it seemed, though, that most of the ones they had been considering ran anywhere from four to seven years. He felt that with these amendments, they could contract directly with a Montana industry for a twenty-year contract. **SEN. ELLIS** conceded this made a lot of sense, especially in light of the fact that most new generation would be coal-fired which did take a larger investment, and he felt the only way to ease the current crisis was with new generation coming online.

Owen Orendorff, Pres., Billings Generation and Gen. Council, Rosebud Energy, stated he had been involved in building the two significant coal-fired plants in the state and felt this program would be well-received and would create many new jobs; he felt that they could get rates under 5 cents per kilowatt and explained that what drove the rate was the amortization of the loan, saying a four to seven year period was not long enough to secure a loan, but that a twenty year loan would provide not only reasonably priced power but also economic development in eastern Montana.

Vote: **Motion carries** with **three Representatives** and **three Senators voting aye; Sen. Ryan voted aye by proxy.**

CHAIRMAN MCNUTT wanted to address the conceptual amendment, **#HB047408.agp, EXHIBIT(8).** **Greg Petesch** explained that it funded the consumer electricity support program which had already been adopted by the committee, by allocating up to $100 million each year from the money generated by the excess revenue tax imposed in SB 512 to the account created by this program. 80% of the money was to be used to promote price stability, and the remainder was earmarked to assist in recruiting new employers with at least 100 employees, for USB funding, and for low-interest loans for new transmission and generation facilities. He went on to say that since the account and the program were administered by the Department of Administration, and some, like the USB program, have been traditionally administered by the PSC, this legislation directed the DOA to consult with the PSC and the Consumer Council in adopting the rules. He added that the account was statutorily appropriated to the department, and in conjunction with **CHAIRMAN MCNUTT's** amendment, allowing them to recover their cost, would give them the appropriation and allowed implementation of this program.

Motion: **REP. DELL MOVED THAT AMENDMENT #HB047408.ATE BE ADOPTED.**
Vote: **Motion carries** with **three Representatives** and **three Senators voting aye; Sen Ryan voted aye by proxy.**

Motion: **Sen. Ellis MOVED THAT THE AMENDMENTS AS DISCUSSED BE ADOPTED.**
Vote: **Motion carries** with **three Representatives** and **three Senators voting aye; Sen. Ryan voted aye by proxy.**

CHAIRMAN MCNUTT did not want to report the acceptance of the conference report yet because their might be some coordination with the conference committee on energy tax issues.
Todd Everts added that they had to wait and see how SB 512 was structured before they took action on HB 645.

HB 632

CHAIRMAN MCNUTT asked **Bob Nelson** to comment on the previously introduced amendments **#HB063210 and #HB063220,** requested by **SEN. RYAN.** **Mr. Nelson** referred to **#HB063220** and surmised the intent was to address the concern with protecting the existing customers

Ex 5

Amendments to House Bill No. 474
Reference Copy
Requested by Senator Alvin Ellis, Jr.
For the House Free Conference Committee

Carrier

Prepared by Gregory Petesch
April 17, 2001 (5:35PM)

1. Title, line 22.
Following: line 21
Insert: "CREATING A CONSUMER ELECTRICITY SUPPORT PROGRAM;"

2. Page 13, line 18.
Insert: "NEW SECTION. **Section 8. Consumer electricity support program.** (1) There is a consumer electricity support program. The purpose of the program is to provide an affordable and reliable electricity supply to customers of the default supplier from July 1, 2002, until June 30, 2005. The consumer electricity support program consists of financial support or the assignment and subsequent disposition of electricity supply.

(2) There is a consumer electricity support account in the state special revenue fund. The account must be used for the deposit of any of the financial sources dedicated to the account. Distributions from the account must be in accordance with rules adopted by the department of administration for the program. Financial sources for funding the account may include:

(a) allocations from the state as provided by law; and

(b) other financial sources as identified in rules adopted by the department of administration.

(3) Electricity supply made available for the program must be either disposed of, with the resulting revenue deposited to the consumer electricity support account, or assigned to the distribution services provider to serve default supply customers. The electricity supply providers must be reimbursed for electricity supply contributed and used in accordance with rules adopted by the department of administration for this program. Electricity supply sources include:

(a) electricity provided by electricity suppliers;

(b) electricity available in the electrical energy pool established in [section 1 of House Bill No. 645];

(c) government power authorities;

(d) qualifying facility electricity supply as provided by law; and

(e) any other source of electricity supply as identified in rules adopted by the department of administration.

(4) The consumer electricity support program must be

administered by the department of administration. The department shall adopt rules necessary to operate the program and to allocate the consumer electricity support resources beginning July 1, 2002. The rules must provide for the equitable distribution of program resources for default supply customers and for the reimbursement of the electricity supply providers. The rules must balance the short-term considerations of cost mitigation with the longer-term interests of encouraging customer demand response by establishing accurate electricity supply price signals. The department shall implement the consumer electricity support program in coordination with the default supplier.

(5) The department of administration may recover the costs of administering the program from the consumer electricity support account."

Renumber: subsequent sections

3. Page 13, line 24.
Following: "~~7~~"
Insert: "(1)"

4. Page 13, line 27.
Insert: "(2) [Section 8] is intended to be codified as an integral part of Title 69, chapter 8, and the provisions of Title 69, chapter 8, apply to [section 8]."

- END -

Exh 6
4-18-01

Amendments to House Bill No. 474
Reference Copy

Requested by Senator Walter McNutt

For the House Free Conference Committee

Prepared by Gregory Petesch
April 18, 2001 (7:54AM)

1. Title, line 8.
Strike: "A LIMITED"
Insert: "AN"

2. Title, line 22.
Following: line 21
Insert: "DEFINING "ELECTRICITY SUPPLY COSTS"; PROVIDING FOR PROCEDURES FOR A TRANSITION TO CUSTOMER CHOICE; ~~PROVIDING~~ FOR THE DEFAULT SUPPLIER'S RECOVERY OF ELECTRICITY SUPPLY COSTS;"
Following: "SECTIONS"
Insert: "35-19-104, 69-8-103, 69-8-104,"
Following: "69-8-201"
Strike: "AND 69-8-416"
Insert: ", 69-8-203, 69-8-210, 69-8-211, AND 69-8-403"

3. Title, line 23.
Following: "MCA;"
Insert: "REPEALING SECTIONS 35-19-103, 69-8-416, AND 69-8-417,"

4. Page 6, line 25.
Insert: **"Section 6.** Section 35-19-104, MCA, is ~~amended~~ to read:

"35-19-104. Permissible purpose of incorporation. A buying cooperative may be organized under this chapter only for the purpose of supplying electricity to small customers as ~~a default~~ an electrical energy supplier, pursuant to ~~69-8-403~~ Title 69, chapter 8, parts 1 through 5."

{*Internal References to 35-19-104: None.*}

Insert: **"Section 7.** Section 69-8-103, MCA, is amended to read:

"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases ~~electric~~ electrical energy, and takes title to ~~electric~~ electrical energy as an intermediary for sale to retail

customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of ~~electric~~ electrical energy but that does not take title to ~~electric~~ electrical energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

(8) "Default supplier" means a customer's distribution services provider ~~or a person that has received a default supplier license from the commission~~.

(9) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(10) "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

(11) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(12) "Electricity supply costs" means actual costs of the electricity, including fuel, ancillary service costs, transmission costs including congestion and losses, and any other costs, shown to the satisfaction of the commission to be directly related to the purchase of electricity and management of electricity cost or a related service. Revenue from the sale of surplus electricity must be deducted from the included costs.

~~(12)~~(13) "Financing order" means an order of the commission

adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

~~(13)~~(14) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and of acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

~~(14)~~(15) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

~~(15)~~(16) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

~~(16)~~(17) "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

~~(17)~~(18) "Local governing body" means a local board of trustees of a rural electric cooperative.

~~(18)~~(19) "Low-income customer" means those energy consumer households and families ~~with incomes~~ at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

~~(19)~~(20) "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

~~(20)~~(21) "Net metering system" means a facility for the production of ~~electric~~ electrical energy that:

(a) uses as its fuel solar, wind, or hydropower;

(b) has a generating capacity of not more than 50 kilowatts;

(c) is located on the customer-generator's premises;

(d) operates in parallel with the distribution services

provider's distribution facilities; and

(e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

~~(21)~~ (22) "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's share of transition costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

~~(22)~~ (23) "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electricity supply for all residential and commercial customers.

~~(23)~~ (24) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

~~(24)~~ (25) "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

~~(25)~~ (26) "Small customer" means a residential customer or a small commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts of a public utility distribution services provider that has opened access on its distribution system pursuant to Title 35, chapter 19, or this chapter.

~~(26)~~ (27) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that holder.

~~(27)~~ (28) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

~~(28)~~ (29) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

~~(29)~~ (30) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

~~(30)~~ (31) "Transition costs" means:

(a) a public utility's net verifiable generation-related

and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

~~(31)~~ (32) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, ~~2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice of electricity supplier~~ 2007.

~~(32)~~ (33) "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

~~(33)~~ (34) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

(35) "Transmission services provider" means a person controlling or operating transmission facilities.

~~(35)~~ (36) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

~~(36)~~ (37) "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance.

~~(37)~~ (38) "Utility" means any public utility or cooperative utility."

{*Internal References to 69-8-103:*
15-72-103 x *15-72-104x* *35-19-102x* *69-3-1403x* }"

"Section 8. Section 69-8-104, MCA, is amended to read:

"69-8-104. Pilot programs. (1) Except as provided in ~~69-8-201(4)~~ 69-8-201(7) and 69-8-311, beginning July 1, 1998, utilities shall conduct pilot programs using a representative sample of their residential and small commercial customers. A report describing and analyzing the results of the pilot programs must be submitted to the commission and the transition advisory committee established in 69-8-501 on or before July 1, 2000.

(2) Utilities shall use pilot programs to gather necessary information to determine the most effective and timely options for providing customer choice. Necessary information includes but is not limited to:

(a) the level of demand for electricity supply choice and the availability of market prices for smaller customers;

(b) the best means to encourage and support the development of sufficient markets and bargaining power for the benefit of smaller customers;

(c) the electricity suppliers' interest in serving smaller customers and the opportunities in providing service to smaller customers; and

(d) experience in the broad range of technical and administrative support matters involved in designing ~~and~~ delivering unbundled retail services to smaller customers."

{*Internal References to 69-8-104:*
69-8-201 x}

Renumber: subsequent sections

5. Page 6, line 29.
Strike: "(6)"
Insert: "(4)"

6. Page 7, lines 5 through 8.
Following: "(2)" on line 5
Strike: remainder of line 5 through "(b)" on line 8

7. Page 7, line 11.
Strike: "(i)"
Insert: "(a)"
Renumber: subsequent subsections

8. Page 7, line 22.
Following: "."
Insert: "A distribution services provider has an ongoing regulated default supply obligation beyond the end of the transition period."

9. Page 7, line 23.
Following: line 22
Insert: "(4) (a) The commission shall establish procedures and terms under which customers may choose an electricity supplier other than the default supplier. The procedures must provide for an orderly process of choice during the transition period and provide conditions for leaving and returning to the default supplier. The procedures must take into account electricity supply contracts for supplying customers during the transition period. The procedures must provide for the recovery of costs associated with those customers who choose an alternative electricity supplier and who wish to return to the default supplier.

(b) Beginning July 1, 2004, loads amounting to 10% or less of the remaining default supply load in each year of the transition period must be eligible to choose an alternative supplier of electricity.

(5) Subject to subsection (4), a customer described in subsection (1)(a) may elect to receive default supply service for 5 years beginning July 1, 2002, by giving notice to the commission and default supplier:

(a) within 60 days after [the effective date of this act], to include its load in the requests for proposals; and

(b) within 5 days of the closing date for responses to

requests for proposals, to include its load in the contract for a supply of electricity, based on prices from the responses to the requests for proposals.

(6) A customer described in subsection (1)(a) who chooses to purchase electricity from the default supplier shall provide the default supplier with its specific monthly load requirements for the 5-year period. The customer shall annually notify the default supplier of its load requirements and shall notify the default supplier at least 6 months in advance of any 10% increase or decrease in its load requirements. The customer shall enter into a contractual arrangement with the default supplier ~~for the~~ electrical energy supply for the 5-year period."

Renumber: subsequent subsections

10. Page 8, lines 4 through 8.
Strike: subsection (6) in its entirety

11. Page 8, line 10 through page 9, line 7.
Strike: section 7 in its entirety
Insert: "**Section 10.** Section 69-8-203, MCA, is amended to read:

"**69-8-203. Public utility -- customer choice ~~-- continued service~~ -- education of customers.** (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines established in 69-8-201. Public utilities shall propose a method for customers to choose an electricity supplier.

~~(2) If a customer has not chosen an electricity supplier by the end of the transition period, a city, county, or consolidated government that is licensed as an electricity supplier may, upon application to and approval by the commission, become the default supplier to residential and commercial customers of a public utility within its jurisdiction. For customers that are not within the jurisdiction of a licensed and approved city, county, or consolidated government electricity supplier area, a public utility shall propose a method in the public utility's transition plans for assigning that customer to an electricity supplier. The commission shall establish an application process and guidelines for the designation of one or more default suppliers for the distribution area of each public utility.~~

~~(3) A public utility may phase in customer choice to promote the orderly transition to a competitive market environment pursuant to the deadlines in 69-8-201.~~

~~(4)~~ (2) Public utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This education process must give special emphasis to education efforts during the transition period."

(*Internal References to 69-8-203:*

69-8-201*x}

Insert: "Section 11. Section 69-8-210, MCA, is amended to read:

"69-8-210. Public utilities -- electricity supply. (1) On the effective date of a commission order implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its generation assets from the rate base.

~~(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.~~

~~(3)~~ (2) ~~If~~ During the transition period, ~~is extended, then~~ the customers' distribution services provider, acting as the default supplier, shall:

(a) beginning July 1, 2002, extend any cost-based contract with the distribution services provider's affiliate supplier for a term not more than 3 years; or

(b) purchase electricity from the market; and

(c) use a mechanism that recovers electricity supply costs in rates ~~to ensure that those costs are fully recovered~~ as provided in subsection (4).

(3) (a) The default supplier shall provide for the full electricity supply requirements of all default supply customers. To meet these requirements, the default supplier shall procure a portfolio of electricity supply using industry-accepted procurement practices, which may include negotiated contracts or competitive bidding. The commission may develop reasonable requirements for the use of competitive bidding in the procurement process. The commission and the consumer counsel may participate in the procurement process.

(b) Default supplier electricity supply contracts may be submitted to the commission for approval before the default supplier enters the contract.

(c) The commission shall approve or reject contracts submitted by the default supplier pursuant to subsection (3)(a) or (3)(b) within 15 days after submission. If the commission rejects a contract, the commission shall inform the default supplier of the basis for the rejection.

(d) In reviewing and approving electricity supply contracts not previously approved by the commission pursuant to subsection (3)(a) or (3)(b), the commission shall consider only those facts that were known or should reasonably have been known by the default supplier at the time the contract was entered into and that would have materially affected the cost or reliability of the electricity supply to be procured.

(4) (a) The commission shall use an electricity cost recovery mechanism that ensures that all electricity supply costs approved by the commission are fully recoverable in rates. The cost recovery mechanism must provide for prospective rate

adjustments for cost differences resulting from cost changes, load changes, and the time value of money on the differences.

(b) The default supplier shall submit a proposed electricity cost recovery mechanism to the commission for approval on or before July 1, 2001. A mechanism must be adopted by the commission before March 30, 2002.

(c) The commission shall establish a method to provide for the full recovery of approved electricity supply costs that extend beyond the end of the transition period, including the assignment of distribution services provider electricity supply contracts.

~~(4)~~ (5) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404."

{*Internal References to 69-8-210: 69-8-201*x*}"

Insert: "Section 12. Section 69-8-211, MCA, is amended to read:

"**69-8-211. Public utilities -- transition costs and charges -- rate moratorium.** (1) Subject to the provisions of this section, the commission shall allow recovery of the following categories of transition costs:

(a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown costs, for which the contract price of generation is above the market price for generation;

(b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan, including costs, expenses, and reasonable fees related to issuing of transition bonds;

(c) the unmitigable transition costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to 69-8-202(3); and

(d) other transition costs as may qualify for recovery under this section.

(2) Transition costs as determined by the commission upon an affirmative showing by a public utility must meet the following requirements:

(a) Transition costs must reflect all reasonable mitigation by the public utility, including but not limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing through transition bonds.

(b) The value of all generation-related assets and liabilities and electricity supply costs must be reasonably

demonstrable and must be considered on a net basis, and methods for determining value must include but are not limited to:

(i) estimating future market values of electricity and ancillary services provided by the assets;

(ii) appraisal by independent third-party professionals; or

(iii) a competitive bid sale.

(c) Investments and power purchase contracts must have been previously allowed in rates or, if not previously in rates, must be determined to be used and useful to ratepayers in connection with the commission's approval of the utility's transition plan.

(d) Unless otherwise provided for in this chapter, ~~only~~ costs related to existing investments and power purchase contracts identified in subsection (2)(c) and costs arising from those investments and power purchase contracts may be included as transition costs.

(3) (a) On commission approval of the amount of a public utility's transition costs, those costs must be recovered through the imposition of a transition charge.

(b) A transition charge may not be collected from customers for:

(i) new or additional loads of 1,000 kilowatts or greater that were first served by the public utility after December 31, 1996; or

(ii) loads served by that customer's own generation.

(c) Subject to commission approval, a utility and a customer may agree to alter the customer's transition charge payment schedule. Public utilities may file with the ~~commission~~ tariffs for electric service rates that foster economic development or retention of existing customers within the state, including generally available rate schedules. Transition charges are the only charges that may be imposed upon a customer class to recover transition costs under this section. A separate exit fee may not be charged.

(4) Transition charges must be imposed within a transition cost recovery period approved by the commission on ~~a case-by-case~~ basis. Except for transition costs recovered under subsection (1)(c), categories of transition costs may have varying transition cost recovery periods.

(5) Approval of transition costs and collection of those transition costs through transition charges is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition costs through any means not authorized by this chapter may not collect transition charges with respect to these transition costs.

(6) Except as provided in subsection (7), public utilities shall implement a rate moratorium ~~during the transition period as follows:~~

~~(a) From July 1, 1998, through June 30, 2000, public~~

~~utilities may not charge rates higher than those rates in effect on July 1, 1998.~~

~~(b)~~ ~~From~~ from July 1, 2000, through June 30, ~~2002, and~~ only for those customers subject to the provisions of 69-8-201(1)(b), During that period, public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. Beginning on July 1, 2000, public utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs.

(7) Excepted from the provisions of subsection (6) are:

(a) increased costs related to universal system benefits programs greater than those currently in rates, including the treatment of universal system benefits program costs as an expense;

(b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.

(c) subject to commission approval, an extraordinary event resulting in either:

(i) a 4% annual revenue requirement increase from July 1, 1998, through June 30, 2000; or

(ii) an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June 30, 2002;

~~(d)~~ the increase or decrease in the annual state and local property tax expense that has occurred since May 2, 1997.

(8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.

(9) ~~Public~~ utilities shall apply savings resulting under 69-8-503 toward the rate moratorium pursuant to subsection (6).

(10) ~~During the 4-year transition period~~ Beginning July 1, 2002, public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings if electric earnings fall below 9.5% earned return on average equity. The public utility may include the flow through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits amortized under this subsection may not be reflected in operating income for ratemaking purposes.

(11) The commission shall issue the accounting orders

necessary to align rate moratorium timing and requirements to actual transition bonds savings."

{*Internal References to 69-8-211: 69-8-201 x*}"

Insert: "Section 13. Section 69-8-403, MCA, is amended to read:

"69-8-403. Commission authority -- rulemaking authority. (1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission and distribution services within the state of Montana, as provided in this chapter, and may not regulate the price of ~~electricity~~ supply except as electricity supply may be procured as provided in this section:

(a) by one or more default suppliers for those customers not being served by a competitive supplier; or

(b) by the distribution function of a public utility for those customers that are not being served by a competitive electricity supplier as provided by commission rules. During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.

(2) The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.

(3) The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.

(4) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(5) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's transition plan.

(6) The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

(7) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

~~(8) The commission shall license default suppliers and~~

~~enforce default licensing provisions pursuant to 69-8-416.~~

~~(9) The commission shall promulgate rules for the licensing of default suppliers on or before December 1, 1999.~~

(8) The commission shall establish electricity supply rates for individual customer classes, which may vary based on cost factors associated with classifications of service or customers and any other reasonable consideration. Collectively, the individual electricity supply rates must reflect the full level of electricity supply costs that the default supplier incurs on behalf of its customers. Approved electricity supply costs are considered to be just and reasonable rates.

~~(10)~~(9) Until the commission has determined that workable competition has developed for small customers, a default supplier's obligation to serve remains.

~~(11)~~(10) In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

~~(12)~~(11) This chapter does not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; or

(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter."

{*Internal References to 69-8-403:*
35-19-103x *35-19-103x* *35-19-104x* }"

Renumber: subsequent sections

12. Page 13, line 18.

Insert: "NEW SECTION. **Section 14. {standard} Repealer.** Sections 35-19-103, 69-8-416 and 69-8-417, MCA, are repealed.

{*Internal References to 69-8-416: 69-8-403a*
Internal References to 69-8-417: None.

Internal References to 35-19-103: None.}"

Renumber: subsequent sections

- END -

Ex 7
4-18-01

Amendments to House Bill No. 474
Reference Copy

Requested by Representative Roy Brown

For the House Free Conference Committee

Prepared by Todd Everts
April 18, 2001 (7:28AM)

1. Page 5, line 12.
Strike: "250"
Insert: "450"

2. Page 5.
Following: line 20
Insert: "(2) "Montana industry" means a commercial enterprise located within Montana that would have consumed more than 5 megawatts of electrical energy on an average during the last 12 months but for closure related to electrical prices."
Renumber: subsequent subsection

3. Page 5, line 23.
Following: "15 U.S.C. 79Z-5A"
Insert: "or as provided for in 16 U.S.C. 796(h)"

4. Page 6, line 14.
Following: "SUPPLIER"
Insert: "or a Montana industry"

5. Page 6, line 16.
Following: "ASSIGNEE"
Insert: "or a Montana industry"

6. Page 6, line 18.
Following: "SUPPLIER"
Insert: "or a Montana industry"

7. Page 6, line 22.
Following: "INTEREST"
Insert: "or a Montana industry"

Carrin

- END -

Ex 8

4-18-01

Amendments to House Bill No. 474
Reference Copy

For the House Free Conference Committee

Prepared by Gregory Petesch
April 18, 2001 (12:57PM)

1. Page 13, line 18.
Insert: "NEW SECTION. **Section 8. Funding of consumer electricity support program.** (1) Up to $100 million each year from the revenue derived from the electrical energy excess revenue tax imposed by [sections 1 through 10 of Senate Bill No. 512] must be transferred from the general fund into the consumer electricity support account.

(2) Pursuant to rules adopted by the department of administration under [section], at least 80% of the money in the account must be used to promote price stability of the supply of electrical energy in Montana:

(a) for default customers of a public utility that has submitted a transition plan pursuant to parts 1 through 5 of this chapter on or before [the effective date of this act]; and

(b) for customers that chose an electrical energy supplier as provided in Title 69, chapter 8, part 2.

(3) Pursuant to rules adopted by the department of administration under [section], the amount remaining in the account after promoting price stability of the supply of electrical energy under subsection (2) of this section may be used for the following purposes:

(a) assisting in the recruitment of new employers with 100 employees or more and in the promotion of the expansion of employment by 100 employees or more by existing employers who need a reasonable and stable supply of electrical energy;

(b) funding universal system benefits programs provided for in this chapter;

(c) providing low-interest loans for new transmission facilities or for improvements to existing transmission facilities;

(d) providing low-interest loans for the construction of new temporary or permanent electrical generation facilities and for the expansion of the net generation capacity of existing electrical generation facilities. The electrical generation facilities referred to in this subsection must have an electrical generation capacity of 60 megawatts or less.

(4) In adopting rules, the department of administration shall consult with the commission and the consumer counsel. The department may contract with the commission for the

administration of portions of the program.

(5) The funds deposited in the account under this section but not expended for the purposes established in this section must be transferred to the general fund after [the termination date of this act].

(6) The money in the state special revenue account is statutorily appropriated, as provided in 17-7-502, for the purposes of [section] and this section."

Insert: "Section 9. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-31-702; 15-34-115; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; [section]; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-222; 80-4-416; 80-11-518; 81-5-111; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit;

pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; and pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005.)"

{*Internal References to 17-7-502:*

2-17-105	*3-5-901*	*5-13-403*	*10-3-203*
10-3-310	*10-3-312*	*10-3-312*	*10-3-314*
10-4-301	*15-1-111*	*15-23-706*	*15-31-702*
15-36-324	*15-36-324*	*15-37-117*	*15-38-202*
15-38-202	*15-38-202*	*15-65-121*	*15-65-121*
15-70-101	*16-1-404*	*16-1-406*	*16-1-411*
16-1-411	*17-1-508*	*17-1-508*	*17-3-106*
17-3-212	*17-3-222*	*17-6-101*	*17-7-304*
17-7-501	*18-11-112*	*19-3-319*	*19-6-709*
19-9-702	*19-13-604*	*19-17-301*	*19-18-512*
19-19-305	*19-19-506*	*19-20-604*	*20-8-107*
20-26-1503	*22-3-1004*	*23-5-136*	*23-5-306*
23-5-409	*23-5-610*	*23-5-610*	*23-5-612*
23-5-631	*23-7-301*	*23-7-402*	*37-43-204*
37-51-501	*39-71-503*	*42-2-105*	*44-12-206*
44-13-102	*50-4-623*	*53-6-703*	*53-24-206*
67-3-205	*75-1-1101*	*75-5-1108*	*75-6-214*
75-10-621	*75-11-313*	*77-1-505*	*80-2-222*
80-4-416	*80-11-518*	*81-5-111*	*82-11-161*
87-1-513	*90-3-1003*	*90-9-306* }"	

- END -

interim, and he asked the members to reconsider their adoption of this amendment so it could be stripped from the bill.

Motion: **Rep. Mood MOVED THAT ADOPTION OF AMENDMENT #HB063220.ATE BE RECONSIDERED.**
Vote: **Motion failed** with **two Representatives (Reps. Dell and Mood)** and **one Senator (Sen. McNutt) voting aye** and **two Senators voting no (Sens. Ellis** and **Ryan); Rep. Brown** joined the meeting late.

VICE CHAIRMAN MOOD referred to a spreadsheet passed around by **Bob Nelson, Consumer Council,** which alluded to a $70 million risk to residential customers as a consequence to the lifeline rate in HB 632, and asked him where in the bill it said that, and how he arrived at that conclusion. **Mr. Nelson** stated that his office had prepared this spreadsheet which calculated the potential difference between market rates and lifeline rates. The basis for the calculation was the potential risk since the bill, in their view, did not specify who was to bear the accrued cost for the difference. He repeated that the object of HB 632 was to regulate rates to the point where they were just and reasonable based on generation cost. He felt if that worked, there would not be a problem but if it did not, there would be that rate differential. When the severability clause was inserted, it raised the possibility that the lifeline rate could exist without the commission's regulating the rates at the generator level, exposing parties who were not generators to the risk of that liability. He had discussed this with **Mr. Uda** who believed that there was a pay back provision which required a pay back for the difference between the interim lifeline rate set by the commission and what the just and reasonable rate ultimately would be. If the commission set a just and reasonable rate on November 30, 2001 which was not substantially different from the lifeline rate, then there would be no pay back liability for those customers, and the Council wanted to bring that to the members' attention. **VICE CHAIRMAN MOOD** surmised that this spreadsheet was pure speculation. **Mr. Nelson** replied it was based on assumptions such as market prices and the size of the load returning. **VICE CHAIRMAN MOOD** asked if he was aware of the harm this spreadsheet had done to HB 632. **Mr. Nelson** claimed it was their obligation to provide information about a possible outcome.

HB 474

CHAIRMAN MCNUTT announced, since the motion had failed, to move on to HB 474 and announced **Amendment #HB047409.agp,**

EXHIBIT(frs88sb0474a01), requested by him and based on the need for a power authority.

Greg Petesch explained that the amendments were modeled after the power authority which was in **SEN. MIKE TAYLOR's** bill and established a Montana power authority, as a state entity. It authorized the power authority to purchase power from a wholesale supplier on a contractual basis as well as purchase electrical generation facilities or transmission/distribution systems; it also authorized them to enter in joint ventures for purposes of financing the construction of a generation facility or distribution system, and enabled the issuance of up to $500 million of revenue bonds serviced by the energy produced from a facility or the distribution system for purposes of funding potential projects.

SEN. ALVIN ELLIS stated he was not fond of **SEN. TAYLOR's** bill and felt there were substantive differences which he would like to explore. He thought that the state would be facilitating this whereas in this instance, he felt it more likely that it would be the private sector, and that participation was on a contractual basis. **CHAIRMAN MCNUTT** replied that this was correct, the state did not have to run or own it. **SEN. ELLIS** asked if it permitted the state to do it. **CHAIRMAN MCNUTT** said that it did. With these amendments, he wanted to have a broad range of how these projects might develop. He felt that the state would not maintain this long-term because the market demanded quick decisions but he wanted the flexibility to be able to act quickly.

SEN. DON RYAN asked for some time to read through them. **CHAIRMAN MCNUTT** agreed, saying this would be part of the total package. He added that he had chosen revenue bonds for the funding because they would not impact the state's bonding authority.

~~HB 645~~

CHAIRMAN MCNUTT announced that there was a "grey bill" for HB 645, saying all the amendments were incorporated in it, and gave the committee a few minuted to look it over. **SEN. ELLIS** wondered if there were any substantive changes over and above what the committee had already adopted, and **Mr. Petesch** said it only reflected amendments adopted to date, and there were no others being brought.

The members took ten minutes to look over the "grey bill".

VICE CHAIRMAN MOOD alluded to some discussions with staff regarding applications for entering the power pool, and said the "grey bill" did not address that issue. **Mr. Petesch** replied page 3, subsection 9 (a) attempted to deal with this by requiring the PSC to establish criteria for participation by buyers and sellers and included the method of allocation of available energy. **VICE CHAIRMAN MOOD** surmised that they had not established criteria but left it up to the rule making authority, which **Mr. Petesch** affirmed, adding that one provision which was specific was that the method of allocation had to provide a preference to irrigators.

CHAIRMAN MCNUTT added that there was another section, saying it would be offered to everybody. **Mr. Petesch** pointed out that the default supplier, distribution services provider and the public utilities have to make participation available to everyone. **CHAIRMAN MCNUTT** commented that the PSC should establish the criteria and it should not be in statute because it would invite a laundry list of complications.

Motion: **Sen. Ellis MOVED THAT THE CONFERENCE COMMITTEE REPORT ON HB 645 BE ADOPTED.**
Vote: **Motion carries** with **three Representatives** and **three Senators voting aye.**

The meeting was recessed until 9 a.m. so the members could familiarize themselves with the new amendments for HB 474.

HB 474

CHAIRMAN MCNUTT called the meeting to order again and invited comments regarding the issue discussed prior to the recess.

SEN. RYAN asked if **SEN. TOOLE** could speak to this since his SB 502 addressed similar issues. Since he was not present, **SEN. RYAN** took it upon himself to elaborate, saying SB 502 gave a preference to small customers under the premise that we build specifically for a large customer and should he go out of business, there would be incurred cost but no revenue. He asked how this bill would deal with that issue. **CHAIRMAN MCNUTT** did not know where to find that in this bill, and **SEN. RYAN** stated that if the power authority decided to help MRI get back into operation by building generation but the price for copper went bad so that there was no longer a market for their product, and the state's investment still had to be repaid, what were the consequences. **Mr. Petesch** explained that the way this concept worked was that upon a plant closure, the electricity would then

be sold either to the default supplier or on the market in order to recover the cost of the bonds.

SEN. ELLIS asked whether this would allow to contract not only with the facility but also with the default supplier for electric supply, and **Mr. Petesch** answered that it did. **SEN. RYAN** thought this was a good amendment because it gave the state a playing chip in negotiating to ensure that the power companies gave us good prices because now we had the ability to go out and become their competition.

REP. TOM DELL referred to subsection (3) on page 2 of the amendment, and asked why use the DNRC. **Mr. Petesch** answered that the rationale was that if a hydro-facility was constructed, water rights had to be obtained to operate the facility, and this was the DNRC's expertise as well as the administering of other state owned assets. **REP. DELL** felt that this could also be about buying dams, conceding that this was a very broad amendment. He then referred to subsection (6) on page 3, and asked if that membership could buy the dams. **Mr. Petesch** replied this could only happen if the Legislature appropriated the money. **REP. DELL** inquired if a fiscal note cost could be determined. **Mr. Petesch** anticipated that it would only show the administrative cost of the power authority itself, such as the meetings and related per diem, because this did not authorize any specific project.

SEN. RYAN asked **SEN. KEN TOOLE** about the difference between his SB 502 and these amendments. **SEN. TOOLE** stated that conceptually, the biggest difference was that his bill focused on supplying the small customer class; if there was excess power, it could be sold off-system to the large industrials, but its first priority was to sell to the default supplier. Its intent was to sell to distribution companies with a small-customer base such as cooperatives, investor owned utilities or the default supplier. The reason behind it was that the more the default supplier relied on the large industrials, the more risk they assumed.

{Tape : 1; Side : B}
SEN. RYAN wondered if there was any need to prioritize or should it be left up to the power authority's discretion. **CHAIRMAN MCNUTT** responded that the bill said to offer cost-based electricity to Montana customers, and he would be comfortable to leave it up to the authority.

SEN. ELLIS stated that in addition, the security of the contracts which the authority was able to garner would have a great deal of

influence on the rate they could get on the bonds as well as the degree of trust the Bond Council would have in this system.

REP. DELL feared that there were tremendous unintended consequences; while he recognized that they were facing problems and had to make tough decisions for the next two years, he realized that generating electricity would become extremely competitive in two years with the new generation encouraged by this Legislature, and if the state held those dams, they would become unproductive assets in two years. He felt that with this bill, they were turning a short-term crisis into a long-term problem. He recalled that this same idea had been proposed earlier and failed, and he objected to bringing it forth again at the twelfth hour.

Motion: **Sen. McNutt MOVED THAT AMENDMENT #HB47409.ATE BE ADOPTED.**

Discussion:

VICE CHAIRMAN MOOD stated that the activities allowed in these amendments were broad, and one should not assume the state would go into the generation business; he felt this was a good element to have in the mix, and he would support it.

CHAIRMAN MCNUTT did not think the bill said the state would go out and buy hydro-dams but envisioned it would broaden the state's capabilities.

Vote: **Motion carries** with **two Representatives** and **three Senators voting aye; Rep. Dell voted no.**

Todd Everts offered to explain an amendment requested by **SEN. FRED THOMAS** which was highly technical in nature and dealt with the USB program. He had not drafted it yet but wanted to familiarize the members with it because of the time constraint. He stated that it would alter the base year from 1995 to 1998, or some three year rolling average prior to the current year assigned to a company. This would increase the amount of the USB by about $700,000 which would be funneled into low-income by raising the percentage they get from a 17% minimum to a 25% minimum. He stated he was working with 69-8-402, and the next amendment would restrict the large customers' ability to self-direct the credit they received by one half, and that would generate about $1.25 million which would go into the USB pool and be directed into irrigation.

VICE CHAIRMAN MOOD wondered what kind of mechanism would be used; if irrigators would be reimbursed. **Mr. Everts** stated he was still working on what the mechanism would be, but the purpose was to lower irrigation power cost.

REP. DELL appreciated it raising the amount for low-income but wondered if it did anything in terms of money put towards conservation programs. **Mr. Everts** replied that with moving the base year up, the fund was increased by $700,000 which, in turn, represented the low-income increase.

Motion: **Rep. Dell MOVED THAT THE CONCEPTUAL AMENDMENT BE ADOPTED.**

Discussion:

Patrick Judge, MEIC, commented that he thought this rolling year average was already established in 1999. **Mr. Everts** replied that there was an annualized basis in 1999; but the 2.4% base was initially for the calendar year 1995. He felt by moving the base year, it would bring that increase of $700,000. **Patrick Judge** stated that if it was based on each years' annual retail sales, it would bring in the expected amount if a growth in earnings was expected, and the MEIC would not object; if there was a decline in sales, it could have the opposite effect.

Donald Quander, Montana Large Customer Group, stated he was not familiar with this particular amendment but wanted to comment on the USB program in general. He stressed that one of the most effective parts of this program were the industry's self-directed fees. That money had been used predominantly for energy-efficiency at facilities, and it was undebatable that the first round of commitments that were made were exactly in the direction which was encouraged. The ability to self-direct some of the amounts not directed at efficiency to low-income energy assistance such as Energy Share had been a very useful tool to that program of which he was a board member. He stressed that the contributions from industry through the self-direct program to Energy Share had been very important over the last two years. He urged the committee not to limit the ability of industry to continue to self-direct USB funds to those much needed programs.

CHAIRMAN MCNUTT asked how much money he was talking about. **Mr. Quander** replied on MPC's system, about $3 million was available of which about $100,000 was not self-directed. He speculated that about $250,000 of that was given to low-income assistance. The remainder was spent on qualifying energy-efficiency projects at the facilities involved. The contributions were on record

with the DOR and none of them had been challenged as being inappropriate.

REP. BROWN asked if these amendments limited the ability of large customers to self-direct. **Mr. Everts** replied that the concept he was working on would state that they could receive credit up to one-half of the USB obligation and the other half would flow into the general pool; of that portion, about $1.25 million or less would be directed through a mechanism to lower the cost for irrigation. This would limit the ability of the large customers to self-direct by one-half.

CHAIRMAN MCNUTT repeated that by changing the base year, it would increase the amount by $700,000 which then would be given to low-income. **Mr. Everts** confirmed that was the number he had been given. **CHAIRMAN MCNUTT** was trying to do a comparison between that number and the one given by **Mr. Quander.** If this all went to low-income, the net increase would be about $450,000. **Mr. Everts** cautioned that his numbers were conceptual, and the committee should wait until he had accurate information.

CHAIRMAN MCNUTT said because of the magnitude of the numbers, he would advise to wait until the amendment was in its final form, and **REP. DELL withdrew** his **motion.**

Mr. Everts stated it was one section he needed to work on, but the calculations and making sure that they all fit would be time consuming.

REP. BROWN asked to also include numbers in terms of conservation and weatherization.

SEN. RYAN mentioned the schools which had opted out and were now wondering how to get back into the default supply and asked where government entities would fall into that, saying he would like to see that addressed as well in HB 474.

David Hoffman, PSC, stated that government entities would not be required to bond to get back onto the system, adding that there was no language addressing that.

The meeting stood adjourned until 1:00 p.m.

{Tape : 2; Side : A}

HB 474

CHAIRMAN MCNUTT called the meeting to order at 1:10 p.m. and introduced **Amendment #HB047411.ate, EXHIBIT(frs88sb0474a02)**, asking **Todd Everts** to go over them.

Mr. Everts explained that there had been a change on page 5, Section (4), where he had included reducing energy costs of irrigated agriculture in Montana as a part of these programs. He stressed that the real meat of the amendments started at the bottom of page 5 through page 7, and these changes were that beginning in 2002, in order to make it a clean start, contributions were based on 2.4% of each utility's annual retail sales in the state for the calendar year ending December 31, 1995 for those utilities who had not filed a transition plan, and December 31, 1998 for all other utilities. He stated that the net impact for cooperatives or MDU who have not filed transition plans, the base funding level stayed at the status quo; for all others, the base year changed, and this increased the funding requirement. The other significant changes started at the bottom of page 6, subsection (5) where it said for a utility that had filed a transition plan, the percentage level for low-income energy assistance increased from a minimum level of 17% to 25%. New funding requirements for irrigated agriculture were on page 7, subsection (6), and they were at 13%. Should there be any money left over after the utility utilized its internal credits, it would go into a fund as established in 69-8-412 to provide for reductions in energy costs for irrigated agriculture, administered by the Department of Agriculture. The last significant amendment could be found under (8) on page 7, where it stated that the large customer must receive credit of up to 50% of their USB charge each year; the remainder was funneled into the utility pool. With regards to the chairman's request, he had asked **Will Rosquist** to research and provide the numbers he asked for.

Mr. Rosquist, PSC, explained that he ran the numbers for MPC and the impact the amendments would have on their Universal System Benefits Program. Under the current 1995 base year, at 2.4% of retail revenue, he arrived at about $8.6 million which was the basis for the USB rates; if they were based on 1998 retail revenue, it would produce approximately $9.3 million which would provide about $2.3 million for the low-income energy program, based on the proposed increase of 25%; applying the 13% for irrigation, that would net about $1.2 million. For the calendar year 2000, the large companies self-directed about $1.5 million. He also mentioned that the PSC had allocated a greater percentage than what current law required from MPC, which amounted to $1.8 million; added to that the amount the large industrials self-

directed and contributed to low-income programs which was $65,000, the total would be $1.9 million. This calculation presented an increase, as applied to MPC, of $450,000 to $510,000 for the low-income funding, based on the provisions in the amendments.

Greg Groepper, Energy Share, stated that Flathead Electric Coop. contributed about $85,000 through self-directed credits to the low-income program; if that was cut in half, he felt there would not be any money. He said that in the past, they would receive about $200,000 which the large customers had not spent and which went back to MPC at the end of the year, and he expected that would be disappearing as well because it would be going towards irrigation. He felt that Energy Share would lose about $600,000 based on these amendments, because the large industrials would use their credits first for their self-directed programs for conservation, and they would have to go to MPC and ask for a share of the additional revenue or ask the PSC to make Energy Share whole.

CHAIRMAN MCNUTT asked where he came up with the $600,000. **Mr. Groepper** replied it was partially based on **Mr. Rosquist's** calculation plus the approximately $200,000 the large companies did not spend which, by PSC rule, had to go to low-income. He figured that half of the companies' money went towards their own programs, and the residual would not be available for Energy Share.

CHAIRMAN MCNUTT argued that his numbers added up to $285,000 coming from Flathead Electric and other large customers, and based on **Mr. Rosquist's** numbers, there should have been an increase of $450,000 to $510,000; subtracting $285,000 from $450,000, left a net increase in the funds available. **Mr. Groepper** replied that he agreed that there would be a net increase, but the funds given to low-income now would have to be discounted because they would disappear. He repeated that unless the PSC would direct monies from the additional revenue to Energy Share, they would be negatively impacted by these amendments.

SEN. RYAN asked whether Energy Share was means-tested. **Mr. Groepper** stated that the private money, about $170,000 annually, was not; the funds donated by cooperatives and large customers through the USB program amounted to about $550,000 last year. This portion had a test in statute, stating that a family's annualized income had to be at or below 150% of poverty, or there could be documented, special case exceptions. **SEN. RYAN** asked him to comment on the LIEAP program. **Mr. Groepper** replied that

this program was federally funded and run by DPHHS; Energy Share had nothing to do with that but he knew that their requirements were that the annual income had to be at or below 125% of the federal poverty guidelines, and traditionally, Energy Share filled the gap that LIEAP did not address.

Donald Quander, Montana Large Customer Group, urged that this amendment not be passed in its current form. He charged that the basic support to this program had been predicated on the ability of the large customers to self-direct those funds, and that it would be exceedingly ironic, at a time where those customers were asked to reduce their load, to take away what had been the single most effective incentive in their introducing energy efficiency in their plants. He mentioned the additional impact on low-income programs which already had been described, concurring that there would be less money available for that as well as for energy efficiency spending which translated into more demand for power rather than less. He argued that at a time where we were hard-pressed to provide financial relief to these same industrial customers with respect to unaffordable energy prices, we now took away half of the credits from an existing program used to become more energy efficient. He understood the desire to lessen the impact on Montana's irrigators as well as other customers because they were facing a crisis, but if the committee wanted to soften the impact, he suggested to simply allocate a portion of the USB fund to irrigators.

CHAIRMAN MCNUTT asked, if the committee was to allocate funds to irrigation, did he foresee that the large industrials would contribute to that as well. **Mr. Quander** elaborated that all customers were currently paying into the USB fund; if a company had an obligation of $100,000, to the extent they were able to document qualifying energy efficiency programs or contributions to a qualified low-income energy assistance program, they would receive matching credits, and they never drew more than they paid in. Under the current proposal, they would still pay the $100,000 but in the future, they would only be able to self-direct or get a credit for $50,000, with the difference being directed to Montana irrigators.

Patrick Judge, MEIC, stated they would support changing the base year in that it would increase the amount of USB funds as well as directing the increase to low-income energy assistance. He objected to the second part of the amendments because it reduced conservation dollars, saying that the large industrials make the most efficient use of the conservation monies. He concurred with **Mr. Quander** in asking to simply allocate funds to the irrigated

agriculture by maybe increasing the percentage from 2.4% to 2.7%, as long as it did not take funds away from the other programs.

Haley Beaudry, CFAC, stated that his company was capped at $500,000 USB per year, even if they were running at half their capacity when they returned to work. This amendment would require them to send in a check for $250,000, taking this money away from the company at a time they were trying to resume operations; it would also do away with their USB credits against conservation efforts. In 1995, Flathead Electric provided 10 megawatts to CFAC; in 1998, it was 137 megawatts, which meant that the change in the base year would increase the hit on this entity fourteen times, and they were not even providing power to the plant anymore. In closing, he stated that by this amendment, it would take cash from a company trying to survive and giving it to another party trying to survive.

Motion: **Sen. Ellis MOVED THAT AMENDMENT #HB047411.ATE BE ADOPTED.**

Discussion:

SEN. ELLIS stated he was not fond of the vehicle used to address this cause but did not have a better one and felt this issue needed to be dealt with.
REP. DELL felt this was robbing Peter to pay Paul, and he would not support it. He sympathized with the irrigators' predicament but felt the USB program should not be used to address this.

REP. BROWN agreed, feeling that everybody lost under this proposal.

VICE CHAIRMAN MOOD concurred, saying to include one more entity at the expense of the USB program did not accomplish anything.

Vote: **Motion failed,** with **three Representatives** and **two Senators voting no; Sen. Ryan voting aye.**

{Tape : 2; Side B}
CHAIRMAN MCNUTT announced that there were two technical amendments, **#HB047412.agp, EXHIBIT(frs88sb0474a03)** and **#HB047411.agp, EXHIBIT(frs88sb0474a04).**

Mr. Petesch explained that this was a change to an already adopted amendment, and it allowed the Department of Administration and the PSC to adopt emergency rules because under the provisions of the old language, those rules could not have been in place by July 1,2001.

Motion: Sen. McNutt **MOVED THAT AMENDMENT #HB047412.AGP BE ADOPTED.**

Discussion:

SEN. ELLIS wanted clarification that "page 13" meant "page 13" of the previous amendment, and not the bill. **Mr. Petesch** confirmed this.

SEN. RYAN wondered if there would be any time for public input allowed on how these rules were adopted. **Mr. Petesch** replied that there would be time; emergency rules allowed to expedite notice and hearing requirements, and were limited to 120 days. This, in effect, allowed them to begin the normal rule making process with full notice and full comment period while, at the same time as they were proposing the emergency rules, so they could get the program up and running by July 1, 2001.

Vote: **Motion carries,** with **three Representatives** and **three Senators voting aye.**

Mr. Petesch explained **Amendment #HB047411.agp,** saying that HB 47 which was part of the in-state investment program as was part of HB 474. HB 47 amended existing law, referencing a section of code which, he was embarrassed to point out, did not exist. This amendment corrected that deficiency so investments could be made pursuant to the sections which authorized investment.

VICE CHAIRMAN MOOD inquired what would happen if this amendment was not adopted. **Mr. Petesch** replied that the program has been operating, he just was not sure what authority the board had been using.

Motion: **Sen. Ellis MOVED THAT AMENDMENT #HB047411.AGP BE ADOPTED.**
Vote: **Motion carries,** with **three Representatives** and **three Senators voting aye.**

CHAIRMAN MCNUTT announced that the committee had completed their work on HB 474.

Motion: **Sen. Ellis MOVED THAT THE CONFERENCE COMMITTEE REPORT BE ADOPTED.**

Discussion:

VICE CHAIRMAN MOOD proclaimed that he would not support this motion because he strongly objected to the language in the

amendments adopted as **#HB047406.agp.** He added that he would support it if there was a chance of stripping them off.

REP. DELL echoed **VICE CHAIRMAN MOOOD's** comments, stating he did not intend to vote for this either, primarily because he felt the committee had not succeeded in accomplishing their goals.

Vote: Motion fails, with **one Representative** and **three Senators voting aye; Reps. Mood** and **Dell voted no.**

ADJOURNMENT

Adjournment: 1:50 P.M.

SEN. WALTER MCNUTT, Chairman

Ex 1
4-19-01

Amendments to House Bill No. 474
Reference Copy

For the House Free Conference Committee

Prepared by Gregory Petesch
April 19, 2001 (7:18AM)

1. Title, line 22.
Following: line 21
Insert: "ESTABLISHING A MONTANA POWER AUTHORITY; ALLOWING THE AUTHORITY TO BUY OR BUILD ELECTRICAL GENERATION FACILITIES OR ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS AND TO ENTER INTO JOINT VENTURES FOR THESE PURPOSES; AUTHORIZING THE BOARD OF EXAMINERS TO ISSUE REVENUE BONDS FOR THE MONTANA POWER AUTHORITY TO ACQUIRE ELECTRICAL GENERATION FACILITIES AND TO BUILD ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS; PROVIDING THAT THE PRINCIPAL AND INTEREST ON THE BONDS IS PAYABLE FROM THE SALE OF ELECTRICAL ENERGY FROM THE FACILITIES AND FROM ELECTRICAL ENERGY TRANSMISSION AND DISTRIBUTION CHARGES;"

2. Page 13, line 18.
Insert: "NEW SECTION. **Section 18. Short title.** [Sections 18 through 25] may be cited as the "Montana Power Authority Act"."
Insert: "NEW SECTION. **Section 19. Purpose.** The legislature finds and declares that:

(1) the economic viability and security of the state of Montana is directly linked to reliable and affordable electrical energy;

(2) electrical energy has become a basic and irreplaceable necessity that impacts the public health, safety, and welfare of all Montana citizens;

(3) Montana's residential, agricultural, governmental, commercial, and industrial consumers of electrical energy are entitled to cost-based prices for electrical energy; and

(4) it is in the public interest that the Montana power authority have the ability to:

(a) purchase electrical energy from any supplier in the wholesale market for the purpose of providing reliable, cost-based power exclusively to Montana consumers;

(b) construct, acquire, or enter into joint ventures to construct or acquire electrical generation facilities that will provide cost-based power to consumers in Montana;

(c) construct, acquire, or enter into joint ventures to construct or acquire electrical energy transmission or distribution systems;

(d) sell electrical energy to a default supplier and to any municipal utility, cooperative utility, or investor-owned utility that serves Montana customers;

(e) contract with public or private entities for the operation and maintenance of state-owned power facilities; and

(f) encourage and support energy conservation to mitigate consumer costs and detrimental impacts on the environment."

Insert: "NEW SECTION. **Section 20. Definitions.** As used in [sections 18 through 25], unless the context requires otherwise, the following definitions apply:

(1) "Cost-based" means the price charged to a distribution services provider that is sufficient to meet the operating costs, including commodity costs, of the Montana power authority and to ensure timely repayment of bonds issued on behalf of or any other debt incurred by the Montana power authority.

(2) "Default supplier" means a distribution services provider.

(3) "Department" means the department of natural resources and conservation established in 2-15-3301.

(4) "Montana power authority" or "authority" means the citizen board established in [section 21]."

Insert: "NEW SECTION. **Section 21. Montana power authority--board composition -- procedures.** (1) There is a Montana power authority consisting of a seven-member citizen board appointed by the governor with the consent of the senate.

(2) In selecting the members, the governor shall:

(a) consider each prospective member's knowledge and understanding of the structural and financial dimensions of the electrical energy sector of the state's economy;

(b) ensure that two of the members broadly represent, as evidenced by their background, experience, and livelihood, the following categories of electrical energy consumption:

(i) irrigated agriculture;

(ii) commercial and industrial enterprise; and

(iii) residential;

(c) choose an at-large member with academic or business credentials that indicate that the person has substantial experience in energy markets in the region of the western states; and

(d) choose an at-large member with substantial experience in financial, banking, and bonding matters.

(3) The members shall elect the presiding officer by majority vote.

(4) Members of the Montana power authority shall serve staggered 4-year terms. The governor shall designate two of the initial members to serve 2-year terms and three of the initial members to serve 3-year terms. Vacancies must be filled by appointment for the unexpired term. A member may not serve more

than two consecutive terms.

(5) The Montana power authority shall meet at least twice a year and may meet more frequently as required by circumstances or at the request of any two or more members of the authority.

(6) Decisions of the Montana power authority require a simple majority of the whole membership.

(7) The Montana power authority is attached to the department for administrative purposes, and the department shall provide staff support and a liaison between the authority and other state or federal agencies."

Insert: "NEW SECTION. **Section 22. Powers and duties.** (1) The Montana power authority may:

(a) purchase electrical energy from any wholesale power supplier, on a contractual basis, without limitation on the duration of any contract, to meet the aggregated load requirements of consumers in the service territory of a distribution services provider in Montana;

(b) purchase electrical generation facilities or electrical energy transmission or distribution systems in the state;

(c) enter into joint ventures with any municipality, a cooperative, an investor-owned utility, or any other public or licensed private entity in Montana for the purpose of financing the construction of an electrical generation facility or an electrical energy transmission or distribution system;

(d) request that the legislature authorize revenue bonds to be issued by the board of examiners pursuant to Title 17, chapter 5, for the purpose of:

(i) constructing electrical generation facilities or electrical energy transmission or distribution systems in the state; or

(ii) purchasing an electrical generation facility or an electrical energy transmission or distribution system; or

(e) sell electrical energy to any distribution services provider in the state;

(f) participate in a regional transmission organization established in response to or in compliance with an order of the federal energy regulatory commission; and

(g) participate with any municipality in an electrical energy generation project as provided in Title 90, chapter 5, part 1.

(2) The Montana power authority shall, subsequent to the purchase of electrical energy from the wholesale market or the generation of power from an in-state generation facility, offer cost-based electrical energy to Montana consumers, including to a default supplier and to any municipal utility, cooperative utility, or investor-owned utility in the state."

Insert: "NEW SECTION. **Section 23. Bond authorization.** (1) The board of examiners may issue and sell bonds of the state in an

aggregate principal amount not to exceed $500 million for the purposes authorized in [section 24]. The bonds are revenue obligations in which the net revenue from the sale of the electrical energy produced from the electrical generation facilities acquired or built pursuant to [section 24] or revenue from electrical energy transmission and distribution charges is pledged for payment of the principal and interest on the bonds. The board may issue the bonds in accordance with the applicable provisions contained in 17-5-921 through 17-5-930.

(2) The proceeds of the bonds, other than any premiums and accrued interest received, must be deposited in an account in the state special revenue fund. Premiums and accrued interest must be deposited in the debt service fund established in 17-2-102. Proceeds of bonds deposited in the account may be used to pay the costs of issuing the bonds and to fulfill the purposes authorized in [section 24]. For the purposes of 17-5-803 and 17-5-804, the account constitutes a capital projects account. The bond proceeds must be available to the Montana power authority and may be used for the purposes authorized in this section without further budgetary authorization.

(3) (a) In authorizing the sale and issuance of the bonds, the board of examiners, upon request of the Montana power authority, may create separate accounts or subaccounts to provide for the payment and security of the bonds, including a debt service reserve account. The net revenue from the sale of the electrical energy produced from the electrical generation facilities acquired pursuant to [section 24] must be pledged to these accounts.

(b) The electrical energy produced from the electrical generation facilities must be offered to in-state customers before the electrical energy may be offered to other customers."

Insert: "NEW SECTION. **Section 24. Use of bond proceeds.** The Montana power authority shall use the proceeds of the bonds authorized in [section 23] to purchase the electrical generation facilities and associated water rights for those facilities, to build electrical energy generation facilities, or to build new state-owned electrical energy transmission or distribution systems. The Montana power authority may not acquire a facility or system that is associated with a superfund project."

Insert: "NEW SECTION. **Section 25. Interagency cooperation.** (1) State agencies shall cooperate with the Montana power authority in the planning of electrical energy purchases or the permitting or constructing of electrical generation facilities.

(2) Within the limits of available resources, state agencies shall provide scientific, economic, and other relevant data requested by the Montana power authority."

Renumber: subsequent sections

3. Page 13, line 27.
Insert: "(2) [Sections 18 through 25] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 18 through 25]."

- END -

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

(8) "Default supplier" means a distribution services provider or a person that has received a default supplier license from the commission.

(9) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(10) "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

(11) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(12) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(13) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and of acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

(14) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

(15) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

(16) "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

(17) "Local governing body" means a local board of trustees of a rural electric cooperative.

(18) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

(19) "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

(20) "Net metering system" means a facility for the production of electric energy that:

(a) uses as its fuel solar, wind, or hydropower;

(b) has a generating capacity of not more than 50 kilowatts;

(c) is located on the customer-generator's premises;

(d) operates in parallel with the distribution services provider's distribution facilities; and

(e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(21) "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's share of transition costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

(22) "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electricity supply for all residential and commercial customers.

(23) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(24) "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

(25) "Small customer" means a residential customer or a small commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts of a public utility distribution services provider that has opened access on its distribution system pursuant to Title 35, chapter 19, or this chapter.

(26) "Transition bondholder" means a holder of transition

bonds, including trustees, collateral agents, and other entities acting for the benefit of that holder.

(27) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(28) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(29) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(30) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(31) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice of electricity supplier.

(32) "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order,

including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the ~~costs of~~ recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

(33) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

(35) "Transmission services provider" means a person controlling or operating transmission facilities.

(35) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

(36) "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) reducing energy costs of irrigated agriculture in Montana;

~~(c)~~(d) renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;

~~(d)~~(e) research and development programs related to energy conservation and renewables;

~~(e)~~(f) market transformation designed to encourage competitive markets for public purpose programs; and

~~(f)~~(g) low-income energy assistance.

(37) "Utility" means any public utility or cooperative utility."

{Internal References to 69-8-103:
15-72-103x 15-72-104x 35-19-102x 69-3-1403x }"

Renumber: subsequent sections

4. Page 8.
Following: line 8
Insert: "Section 8. Section 69-8-402, MCA, is amended to read:

"69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance during the transition period and into the future.

(2) Beginning January 1, ~~1999~~ 2002, 2.4% of each utility's

annual retail sales revenue in Montana for the calendar year ending December 31, 1995 for those utilities that have not filed a transition plan and December 31,1998 for all other utilities, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an annualized basis in ~~1999~~ 2002, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives. Except as provided in subsection ~~(7)~~ (8), these universal system benefits charge rates must remain in effect until ~~July 1, 2003~~ December 31, 2005.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) Utilities must receive credit toward annual funding requirements for a utility's internal programs or activities that qualify as universal system benefits programs, including those portions of expenditures for the purchase of power ~~that are for~~ the acquisition or support of renewable energy, conservation-related activities, irrigated agriculture or low-income energy assistance, and for large customers~~'~~ programs or activities as provided in subsection ~~(7)~~ (8). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility's distribution services provider at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer's distribution services provider shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for low-income related expenditures and irrigated agriculture, the activity must have taken place in Montana.

(f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs, irrigated agriculture, and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) ~~A~~ For a utility that has filed a transition plan, that

utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at ~~17%~~ 25% of the utility's annual universal system benefits funding ~~level and~~ is inclusive within the overall universal system benefits funding level. For a utility that has not filed a transition plan, that utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) (a) Except for those utilities that have not filed a transition plan, a utility's minimum annual funding requirement for reducing energy costs for irrigated agriculture is established at 13% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(b) A utility must receive credit toward the utility's irrigated agriculture assistance annual funding requirement for the utility's internal irrigated agriculture assistance programs or activities.

(c) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal irrigated agriculture energy assistance fund established in 69-8-412.

~~(6)~~(7) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

~~(7)~~(8) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) $500,000, less the large customer credits provided for in this subsection ~~(7)~~ (8); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection ~~(7)~~ (8);

(ii) must receive credit of up to 50% of that large customer's universal system benefit charge each year toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures

must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits ~~charge~~ allowable credit for the calendar year must be ~~used as a~~ applied to the credit provided in subsection (8)(a)(B)(ii) ~~against those charges~~ in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

~~(8)~~(9) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the transition advisory committee provided for in 69-8-501. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the transition advisory committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and to the transition advisory committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

~~(9)~~(10) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

~~(10)~~(11) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection ~~(10)(b)~~ (11)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."
{*Internal References to 69-8-402:*
69-8-201x *69-8-201x* *69-8-311x* *69-8-412x*
69-8-414 x *69-8-414x* *69-8-501x* }"

Insert: "Section 9. Section 69-8-412, MCA, is amended to read:

"69-8-412. Funds established -- fund administrators designated -- purpose of funds -- department rulemaking authority to administer funds. (1) If, pursuant to 69-8-402(2)(f), ~~or~~ (5)(b), or (6)(c), there is any positive difference between credits and the annual funding requirement, the department of revenue shall establish one or ~~both~~ all of the following funds:

(a) a fund to provide for universal system benefits programs other than low-income energy assistance and reducing the energy costs of irrigated agriculture. The department of environmental quality shall administer this fund.

(b) a fund to provide universal low-income energy assistance. The department of public health and human services shall administer this fund.

(c) a fund to provide for reductions in the energy costs of irrigated agriculture. The department of agriculture shall administer this fund.

(2) The purpose of these funds is to fund universal system benefits programs.

(3) The department of environmental quality and the department of public health and human services may adopt rules that administer and expend the money in each respective fund based on an annual statewide funding assessment that identifies funding needs in universal system benefits programs. The annual assessment must take into account existing utility and large customer universal system benefits programs expenditures."
{*Internal References to 69-8-412:*
69-8-402 *69-8-402* }"

Insert: "Section 10. Section 69-8-414, MCA, is amended to read:

"69-8-414. Universal system benefits programs credit review process. (1) All annual reports required pursuant to ~~69-8-402(8)~~ 69-8-402(9) and ~~(10)~~ (11) must be filed with the department of revenue on March 1 of each year.

(2) Except as provided in 69-8-413, upon a challenge by an interested person, the department of revenue shall ensure that the credit claimed is consistent with this chapter. An interested person may file comments challenging the claim, including supporting documentation, with the department of revenue. A challenge of any claimed credit must be filed within 60 days of the department of revenue's receipt of the credit claimant's annual reports required pursuant to ~~69-8-402(8)~~ 69-8-402(9) and

~~(10)~~ (11).

(3) Claimed credits are presumed to be correct unless challenged by an interested person. If a challenge is filed by an interested person, the department of revenue shall conduct an initial review of a challenged credit and shall make a determination as to the likelihood that the challenged credit qualifies for universal system benefits programs. If the department of revenue finds that the challenged credit is not likely to qualify for universal system benefits programs, the department of revenue shall formally review the challenge; otherwise, the department of revenue shall dismiss the challenge and provide a statement of the reasons supporting dismissal of the challenge. The department of revenue may request additional information from the credit claimant or interested person. The department of revenue shall complete the initial review within 30 days of the challenge.

(4) If the department of revenue determines that a formal review of a challenged credit is necessary, the department of revenue shall provide public notice of the opportunity to comment to the credit claimant and interested persons. The department of revenue may also schedule an oral hearing. If a hearing is scheduled, the department of revenue shall provide public notice of the hearing to the credit claimant and interested persons.

(5) For a formal credit review challenge, the following procedures apply:

(a) The credit claimant shall provide documentation supporting the credit claimed to the department of revenue and to all interested persons, subject to department of revenue protective orders for confidential or sensitive materials, upon a showing of a privacy interest by the credit claimant.

(b) The department of revenue shall make all materials related to the claim, the challenge, and the submitted comments available to the credit claimant and for public inspection and photocopying, subject to any department of revenue protective orders.

(c) The credit claimant may respond in writing to any comments and other documents filed by an interested person.

(d) The department of revenue may ask for additional detailed information to implement this section.

(6) Upon completing a formal review of a challenged credit, the department of revenue shall make a decision to certify or to deny the credit claimed, providing a statement of the reasons supporting the department of revenue's decision. The formal review of a challenged credit, including the department of revenue's final decision, must be completed within 60 days of the department of revenue's public notice of the opportunity to comment on the challenged credit."

{*Internal References to 69-8-414:*
69-8-402x *69-8-413x* }"

Renumber: subsequent sections

- END -

Amendments to House Bill No. 474
Reference Copy

Ex 3
4-19-01

For the House Free Conference Committee

Prepared by Gregory Petesch
April 19, 2001 (12:41PM)

1. Page 13, line 18.
Insert: "**26. Adoption of rules.** Because the supply and price of electricity constitute a threat to the public health, safety, and welfare, the commission and the department of administration may begin proceedings to adopt rules immediately upon passage and approval of [this act]. The rules must be adopted by July 1, 2001."

- END -

Amendments to House Bill No. 474
Reference Copy

Ex 4
4-19-01

Requested by Senator Walter McNutt

For the House Free Conference Committee

Prepared by Gregory Petesch
April 19, 2001 (12:47PM)

1. Page 13, line 18.
Insert: "NEW SECTION. **Section 8. Coordination instruction.** If [this act] and House Bill No. 47 are both passed and approved, then the references contained House Bill No. 47 to 17-6-317 are changed to 17-6-316."

- END -

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
FREE CONFERENCE COMMITTEE ON HOUSE BILL 474

Call to Order: By **CHAIRMAN WALTER MCNUTT**, on April 20, 2001 at 1:25 P.M., in Room 137 Capitol.

ROLL CALL

Members Present:
Sen. Walter McNutt, Chairman (R)
Rep. Douglas Mood, Vice Chairman (R)
Rep. Roy Brown (R)
Rep. Tom Dell (D)
Sen. Alvin Ellis Jr. (R)
Sen. Don Ryan (D)

Members Excused: None.

Members Absent: None.

Staff Present: Greg Petesch, Todd Everts, Legislative Branch
Marion Mood, Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted:
Executive Action: HB 474

EXECUTIVE ACTION ON HB 474

CHAIRMAN WALTER MCNUTT announced there were several new amendments which would be discussed and voted on separately.

Motion/Vote: **SEN. ALVIN ELLIS, JR., MOVED AMENDMENT #HB047409.AGP BE ADOPTED, EXHIBIT(frs89sb0474a01).**

Discussion:

Greg Petesch explained that this was an amendment to an already adopted amendment, and the new language was inserted in bold

type; it dealt with the power authority and revenue bonds. The first change on page 3 was a clarification that the power authority can purchase, construct, and operate power generation facilities. The new language on page 4 essentially clarified the standard procedure for issuing bonds, and the change on page 5 dealt with the use of the proceeds to either design and build new generation facilities or to pay capitalized interest during construction, or make use of other options as described therein.

REP. TOM DELL asked why these changes were made, and **Mr. Petesch** replied that the Bond Council had requested them after reviewing the language.

Motion/Vote: **Motion carried**, with **3 Senators and 3 Representatives voting aye.**

Mr. Petesch introduced Amendment #HB047414, **EXHIBIT(frs89sb0474a02)**, and explained this was also amending a previous amendment by adding "or may choose to again be served by the default supplier"; this clarified the procedure established by the PSC to allow opting in and opting out, and this choice must be available by July 1, 2002; it was designed so no one can opt back in under the rate freeze.

Motion/Vote: **SEN. ELLIS MOVED** that Amendment #HB047414.agp **BE ADOPTED.**

Discussion:

REP. ROY BROWN asked if the commission would be offered guidelines as to how long a customer had to be on or off the system. **Mr. Petesch** reiterated that the long version of this amendment had provided for five years, and the committee had chosen to go with a less restrictive version and agreed to allow the PSC to adopt procedures it determined to be appropriate. **REP. BROWN** surmised that customers opting in and opting out would create quite some concern for the default supplier, and the committee's intent should be that it did not happen that way. **Mr. Petesch** drew his attention to the last sentence of the amendment where it said the procedures have to provide for full recovery of the cost associated with this. **CHAIRMAN MCNUTT** felt it also said that the PSC had the authority to establish procedures and terms under which they can come and go.

Motion/Vote: **Motion carried** with **3 Senators and 3 Representatives voting aye.**

SEN. DON RYAN introduced Amendment #HB047421.ate, **EXHIBIT(frs89sb0474a03)**, which had been inserted in HB 632 and was amended to include "biomass" which would give people an alternate choice.

Motion/Vote: **SEN. RYAN MOVED** Amendment #HB047421.ate **BE ADOPTED.**
Motion: **Motion carried,** with **3 Representatives and 3 Senators voting aye.**

Motion/Vote: **SEN. ELLIS MOVED** that Amendment #HB047411.ate, **EXHIBIT(frs89sb0474a04) BE ADOPTED.**

Discussion:

SEN. ELLIS stated that this amendment was a revamped version of the one he had proposed the day before. He pointed out that it did not increase the USB charge but instead appropriated a percentage of it to irrigation conservation; this meant the irrigator had to switch to smaller pumps or lower pressure heads to be entitled to this financing. **Todd Everts** reiterated that this amendment did nothing to change the base year or raise the percentage; it directed a utility which had filed a transition plan to apply 15% of the USB monies to reducing energy cost through conservation and efficiency measures for irrigated agriculture.

CHAIRMAN MCNUTT asked if this amendment had any effect on the low-income programs. **Todd Everts** replied it did not because the low-income program had a prioritization of at least 17% of the existing USB monies, and the 15% for irrigated agriculture was also a portion of the existing fund.

REP. BROWN asked for a representative from Energy Share, and **Greg Groepper, Exec. Director,** stepped forward, praising **SEN. ELLIS** for a much better amendment with regards to the low-income program.

REP. TOM DELL asked if **Debbie Smith** had any comments on the amendment. **Debbie Smith** also lauded the concept; she was not sure if MDU or Pacific Gas & Electric were participating in this program. She referred to MPC having recently updated their conservation potential for its service territory, and identified about 100 megawatts for savings that were available at $35 per megawatt hour or less, and it was estimated that less than 1% of that was from irrigated agriculture, 25% from residential customers, and the remaining percentage from the commercial/industrial sector. She suggested checking with the

power companies whether there was enough conservation available in irrigated agriculture to meet this threshold.

SEN. ELLIS asked if someone from the cooperatives could comment on this, too. **Doug Hardy, MT Electric Cooperatives,** stated that only the Flathead and Glacier Cooperatives had opted into competition; the former having about 300 irrigation systems which could be true beneficiaries of this program, and the latter had a significant irrigation load as well. The rest of the cooperatives would have the right to direct but would not have the percentage mandate.

REP. BROWN asked whose share the 15% would come from. **Debbie Smith** explained that it come from the remainder of the USB fund; it would not be deducted from the low-income programs but from conservation directed to other sectors and the renewable power fund. In determining which programs to fund first, the power companies looked at where they could get the most savings for the least amount of money.

REP. BROWN wanted to make sure that this satisfied the large customers who had objected to the old version of this amendment. **Donald Quander, Counsel for MT Large Customer Group,** felt the present amendment would not inhibit the ability of large customers to self-direct funds up to the amount they pay to the USB; the question at hand dealt with prioritizing the remaining funds among other uses.

SEN. RYAN referred to a remark by **SEN. ELLIS** that this had the potential to conserve water, too. **SEN. ELLIS** explained that using lower pressure sprinkler heads resulted in water dispersal less wide and thus less evaporation which in turn got more water to the ground.

CHAIRMAN MCNUTT invited others from the audience to comment on this issue.

Warren McConkey, Gen. Mgr., Flathead Electric Cooperative, stated that even though they had about 360 agricultural accounts, these only amounted to 2% of total sales, and 15% of the total USB program designated for this small sector would be almost impossible to reach. Moreover, they had implemented energy efficiency measures for that sector over the last 10 years, making further conservation very difficult.

REP. DELL asked what happened if this was not achieved. **Mr. Everts** replied if the 15% was not achieved, there was a state

fund created to provide for energy cost reduction for irrigated agriculture through conservation efficiency as per page 9; this would be administered by the USDA. **REP. DELL** inquired if this fund could be used if there was no money for other programs. **Mr. Everts** declined comment.

Mike Murphy, MT Water Resource Association, rose in support of the amendment because he felt this type of program could become critical to irrigated agriculture, in light of rising prices, even though he could not endorse the 15% level.

SEN. ELLIS wondered if someone from the PSC could be more specific about whether this program really obligated $800,000. **Will Rosquist, PSC,** explained that he computed 15% of MPC's Universal System Benefit's expenditures for the year 2000 and arrived at $1.3 million. **SEN. ELLIS** suggested reducing the percentage to 6%. **John Hines, Northwest Power Planning Council,** calculated that based on a USB collection of $8.5 million per year, 6% would represent $510,000. **CHAIRMAN MCNUTT** asked **SEN. ELLIS** if this amount was more in line with this thinking, which **SEN. ELLIS** confirmed.

Substitute Motion: **CHAIRMAN MCNUTT moved** to reduce the 15% tp 6%.
Motion/Vote: **Motion carried,** with **3 Representatives and 3 Senators voting aye.**

CHAIRMAN MCNUTT stated that now the original motion was before them, except for the change to 6%.

Motion/Vote: **Motion to adopt Amendment #HB047411.ate carried,** with **3 Representatives and 3 Senators voting aye.**

{Tape : 1; Side : B}

CHAIRMAN MACNUTT introduced Amendment #HB047413.agp, EXHIBIT(**frs89sb0474a05**), requested by **REP. DOUG MOOD.**

REP. MOOD commented that he was concerned with some of the language in HB 474 as amended, and a discussion with staff members and **Mike Hanson, NorthWestern Corp.,** resulted in the amendment he was proposing. He stated that electric supply costs were defined more comprehensively in order to enable the PSC to determine whether the full definition had been met when looking at the feasibility of a contract. He asked **Mr. Petesch** to explain the language change in Section (12). **Mr. Petesch** stated that this amendment replaced Section (12) and the definition of

electric supply cost in the previously adopted set. The provision of PSC pre-approval of supply contracts submitted to them within 15 days and the automatic inclusion of those supply costs in the rates, if approved, had been removed; this would allow the default supplier to submit contracts or bid processes to the PSC, and the commission has the option of commenting on them. In essence, it required that the commission use an electricity supply cost mechanism which ensured that all electricity supply costs were fully recoverable in rates. He further stated that with the costs redefined, the dispute in a rate case for the default supplier was whether the submitted costs fell within the definition and if they did, they would be recoverable in rates; if they did not, they would be excluded.

REP. DELL asked a staff member to expand on the industry vernacular that had been used throughout. **Mr. Petesch** complied by saying that the discussion with regards to the first amendment had revealed terms such as "ancillary cost" and "congestion"; subsequently, subsection (c) had been added, providing that the terms used in the definition have to be construed according to industry standards.

REP. MOOD requested of **Mr. Petesch** to explain Section 4 (b) on page 2 of the amendment. **Mr. Petesch** said that the concept had already been adopted, and it required the default supplier to submit a proposed electricity supply cost mechanism to the commission for approval by July 1, 2001 which had to be reviewed, modified, and adopted by March 30, 2002; this would give the commission a year before the rate moratorium ended. He was certain that a cost recovery mechanism had already been developed and submitted to the commission.

SEN. ELLIS asked someone from NorthWestern to comment on these amendments. **Mike Hanson** reiterated that their concern all long had been that the default supplier not be put in a position where they had to expend funds for power and were not able to recover those; he felt this amendment addressed that concern. He also welcomed that the pre-approval clause had been removed.

REP. DELL wondered why Section (2), subsection (2) of the original amendment was eliminated. **Mr. Petesch** explained that this had been taken out earlier and was merely reflected here; the reason was that if the default supplier was allowed to recover their costs, he could not be put into a deficit situation.

SEN. DON RYAN invited a PSC representative to comment on this. **David Hoffman** stated that the commission had not yet met to review these amendments, and his comments would be based on previous positions the commission had taken. He felt the changes to section 69-8-210 hindered the commission's ability to assert their statutory authority; he alluded to the legal memo which the PSC's staff had prepared and which relied heavily on the provisions in 69-8-210. These had been partially eliminated and modified in this amendment. Their staff had also expressed concern with the perceived guaranteed full cost recovery, saying this modified the method by which the PSC set rates. To eliminate the guaranteed full cost recovery, he proposed an amendment for Subsection (4)(a) on the second line, to insert after "ensures that all", "prudently incurred". Lastly, he mentioned that several members of their legal counsel were available to answer questions.

REP. DELL was concerned with the potential cost to the consumers; he hypothecated that if there was congestion in the transmission lines, the power company would purchase transmission to solve the problem which would be expensive; he felt that there needed to be some incentive to the default supplier to operate prudently, as well as some accountability. He claimed that if there was no accountability, some of the incurred costs would be shifted to the consumer. **Pat Corcoran, MPC,** charged that the default supplier had to act in a prudent manner and would not enter into a contract arbitrarily. He referred to Section (3) (a) which established guidelines for the default supplier. They did have to weigh alternatives and evaluate the economics of one situation versus the other and would not enter into a contract that included congestion if this was unfeasible. **REP. DELL** inquired whether the PSC, with these amendments, would be able to second-guess the default supplier's actions, such as accusing them of paying too much, or would the default supplier get cost recovery regardless. **Mr. Corcoran** referred to Section (3) (c) which dealt with the commission's review of the activities of a particular transaction. **REP. DELL** maintained that after the review, the commission could still say that the default supplier paid too much, and the supplier would need to justify their actions and show why they took certain steps. Considering all this, he asked if it was the commission's responsibility to prove the default supplier wrong. **Mr. Corcoran** agreed with him, saying they had to make the determination based on their review of the facts and materials whether it was the best decision at the time. He was quick to point out that this was a process, and the decisions made had to be the best decisions for the benefit of the customer.

REP. DELL asked the question regarding cost shifting and accountability of **David Hoffman,** hoping these amendments provided some assurance that the power companies would be held accountable. **Mr. Hoffman** repeated his earlier concern that language in the amendment guaranteed cost recovery; he charged that the commission's role was to balance the interests of the utilities and the consumers, and some of the provisions in the bill as well as this proposed amendment tempered the cost recovery language slightly. He felt that the commission might be reluctant to have its fingerprints on these contract at the time they are entered into when they have to act in a quasi judicial capacity subsequently. He invited other PSC staff to add to his take on it.

Will Rosquist, PSC, referred to the exchange with **Mr. Corcoran** with regards to the commission having to prove that actions taken were too expensive, and, claiming he would have to take it a step further, asked what would happen if the commission did find the company's actions in getting around the congestion increased costs unnecessarily. He feared the commission would not have any recourse because congestion costs were defined as electricity supply costs, and under (4)(a), the PSC shall use a cost recovery mechanism which ensures that all electricity supply costs are fully recoverable in rates. He summarized that in his view, even if the commission could prove the actions taken were not prudent, they would not have any recourse.

CHAIRMAN MCNUTT touched on the conceptual amendment suggested by **Mr. Hoffman** with regards to "prudently incurred supply costs" and asked **Will Rosquist** if he would endorse it. **Mr. Rosquist** replied that from staff's perspective, the preference would be to have most of that language stricken since the standards for prudence reviews were firmly established in statute, and the commission cannot disallow cost recovery on an arbitrary basis. Lastly, he asserted that if it was not possible to strike that language, he would favor that "prudently incurred" would be added.

CHAIRMAN MCNUTT asked **John Hines** to comment on this for added clarity. **John Hines** felt the reason for the varied answers was the natural tension between the regulators and the utilities, of having the risks aligned appropriately and still leaving the utilities with the ability to get financing and enter into power supply contracts. He charged that in his opinion, these amendments did not provide full cost recovery; in fact, (12)(a) was rather specific about which items could be put into rates. On the other hand, he felt if more clarification was needed, he

would favor the conceptual amendment brought forth by **Mr. Hoffman**.

{Tape : 2; Side : A}
CHAIRMAN MCNUTT also asked for **Mike Hanson's** views. **Mr. Hanson** elaborated on the points made by **Mr. Corcoran** that industry practice was to look at a least cost, best alternative type approach which he believed was encompassed in the definition. Addressing the language in (4)(a), the requirement that they file a rate recovery mechanism with the commission would establish those procedures, and this assumed that the material was known beforehand, and if it did not fit the prudence aspect, it would not be allowed in the mechanism. He, too, did not oppose the conceptual amendment if it helped clarify things.

REP. ROY BROWN asked **Greg Petesch** to address an earlier concern with the congestion costs found as being too high, and wondered if he thought this situation was covered in this added amendment. **Mr. Petesch** understood it to be covered because congestion charges were very expensive and the company better have a good reason to incur these charges under the restriction of accepted industry standards. If they were deemed imprudent, with this added language, the PSC could exclude them.

REP. MOOD asked for **Mike Uda's** response to these amendments. **Mr. Uda** started out by reciting the first tenet of the Hippocratic oath" first, do no harm" because he felt that adopting this amendment would do tremendous harm to the PSC's assertion of jurisdiction. He referred to the staff memo prepared by the PSC which said eliminating subsection (2), which was stricken on page 1 of Amendment #HB047413.agp, meant that if they entered into a contract with a market based rate, the commission could not come back and second-guess their decision, saying they should have done something different, which was also **Mr. Petesch's** analysis. He informed the committee that there was an ongoing question of legal jurisdiction over the assets of PPL Montana, and he feared adoption of these amendments would be interfering with current law. He also objected to the first sentence in subsection (3)(a) because it did not give a time frame and it seemed to assume to be a substitute for current commission jurisdiction. He felt there was language in Subsection (3) of 69-8-210 ensuring full cost recovery and this amendment was not needed; he charged that the utilities would not be here and ask to change the law if it did not benefit them. He repeated that there was a regulatory balance between the rights of the consumers and the interest of utilities, and the PSC had to weigh that balance. He pointed out that this balance had been in place since 1913 when the decision

to regulate public utilities was first made, and it would be a mistake for this committee to adopt these amendments in this form.

CHAIRMAN MCNUTT questioned where the power companies would buy power from after July 1, 2001, if not on the market. **Mr. Uda** replied that currently under 69-8-202, until the commission issued its final transition order, it had the authority to continue to control the price of electricity supply for default customers. He made it clear he was not against full cost recovery as long as these costs were incurred prudently; what he objected to was the attempt to change current law which impeded the PSC's ability to its job and implement SB 390 in a way it was intended.

CHAIRMAN MCNUTT commented that the words "assumption" and "if" were leading the committee around in a circle. He felt the committee had worked very hard to come up with a policy decision that was trying to encompass the assumptions and the if's; in the essence of time, he invited the members to voice any other comments or questions.

REP. MOOD admitted it was difficult to walk the fine line, and he believed that the vehicle which had the best opportunity to help the state was gone. He was aware that this was the 89th day and a decision had to be made, admitting it was difficult to know what was best without making a decision and letting some time pass. He stated he worked on these amendments, hoping to find some middle ground, but maybe that middle ground did not exist.

REP. BROWN wanted **Greg Petesch** to respond to **Mike Uda's** charges that these amendments affected the PSC's authority. **Mr. Petesch** assured him that this bill was careful not to affect the sections of the law which state that during the transition period, the electrical generation assets remain part of the rate base. On page 1 of the amendment, the part which said "during the transition period, the distribution services provider can extend any cost based contract with their affiliate supplier for not more than three years" had also not been disturbed. In his opinion, this left the ability of the PSC to assert authority over the generation assets intact. If the assertion of jurisdiction over the generation asset was unsuccessful, meaning the PSC cannot regulate the ability of the default supplier to purchase electrical energy under the regulated rate, they would have to purchase power on the market. If the PSC was successful, it would be beneficial to the consumer because they would continue to get power for three additional years at the cost

based contract rate; if the assertion of jurisdiction failed and the default supplier was forced to buy power on the market, which was always the optional mechanism under Subsection (c), the default supplier would be allowed to recover those supply costs. This meant we would not force him to incur deficit sales.

REP. BROWN commented that indeed, the members were walking a fine line, wanting to have an incentive for the default supplier to get the best prices for the consumers without giving them free reign to do what they want. He felt these amendments and others already passed had greatly improved the situation they were facing, and he thanked **REP. MOOD** for improving on the amendments.

SEN. ELLIS also voiced support for the amendments. He related how the legislature had faced other tough decisions; one being to tax the use of the publicly owned transmission lines from Colstrip to the West Coast, and they had prevailed, using the legal staff to guide them. He professed confidence in the staff and believed they were right on this issue, and stated he would support this amendment for that reason.

REP. DELL stated he still had problems with the cost shifting to the consumer, but he was satisfied that the USB was extended, that there was a customer pool provision, and there were obligations for the default supplier beyond the transition period. He summarized that this bill was loaded with things which were critical, and he understood that the time had tome where a decision had to be made. He said he had gone through the same deliberations as **REP. MOOD** in trying to find the best solution. He proclaimed that he would vote for this bill as amended, because by rejecting it the day before they had made it a better bill. He said the newspapers might say they caved in a bit to the utilities, but he believed that they had stood as firm as they could without giving away extensions to the USB, which was critical.

REP. MOOD charged with the caveat that the amendments were not yet in the normal format and would be adjusted by staff, and the understanding that the conceptual amendment "prudently incurred" would be inserted in (4)(a), he would move his amendment.

Motion/Vote: **REP. MOOD moved** that amendment #HB047413.agp **BE ADOPTED.**
Vote: **Motion carried** with **3 Representatives and 3 Senators voting aye.**

Greg Petesch asked the committee's indulgence to undo a technical amendment adopted yesterday, which was to correct an erroneous reference in HB 474; the conclusion he drew was in error because the statute had changed due to the special session but the reference was still correct.

Motion/Vote: **REP. DELL MOVED** that the Free Conference Committee Report **BE ADOPTED.**
Vote: **Motion carried** with **3 Representatives and 3 Senators saying aye.**

ADJOURNMENT

Adjournment: 2:50 P.M.

SEN. WALTER MCNUTT, Chairman

MARION MOOD, Secretary

WM/MM

EX. 1
4-20

Amendments to House Bill No. 474
Reference Copy

For the House Free Conference Committee

Prepared by Gregory Petesch
April 20, 2001 (1:03PM)

1. Title, line 22.
Following: line 21
Insert: "ESTABLISHING A MONTANA POWER AUTHORITY; ALLOWING THE AUTHORITY TO BUY OR BUILD ELECTRICAL GENERATION FACILITIES OR ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS AND TO ENTER INTO JOINT VENTURES FOR THESE PURPOSES; AUTHORIZING THE BOARD OF EXAMINERS TO ISSUE REVENUE BONDS FOR THE MONTANA POWER AUTHORITY TO ACQUIRE ELECTRICAL GENERATION FACILITIES AND TO BUILD ELECTRICAL ENERGY TRANSMISSION OR DISTRIBUTION SYSTEMS; PROVIDING THAT THE PRINCIPAL AND INTEREST ON THE BONDS IS PAYABLE FROM THE SALE OF ELECTRICAL ENERGY FROM THE FACILITIES AND FROM ELECTRICAL ENERGY TRANSMISSION AND DISTRIBUTION CHARGES;"

2. Page 13, line 18.
Insert: "NEW SECTION. **Section 18. Short title.** [Sections 18 through 25] may be cited as the "Montana Power Authority Act"."
Insert: "NEW SECTION. **Section 19. Purpose.** The legislature finds and declares that:

(1) the economic viability and security of the state of Montana is directly linked to reliable and affordable electrical energy;

(2) electrical energy has become a basic and irreplaceable necessity that impacts the public health, safety, and welfare of all Montana citizens;

(3) Montana's residential, agricultural, governmental, commercial, and industrial consumers of electrical energy are entitled to cost-based prices for electrical energy; and

(4) it is in the public interest that the Montana power authority have the ability to:

(a) purchase electrical energy from any supplier in the wholesale market for the purpose of providing reliable, cost-based power exclusively to Montana consumers;

(b) construct, acquire, or enter into joint ventures to construct or acquire electrical generation facilities that will provide cost-based power to consumers in Montana;

(c) construct, acquire, or enter into joint ventures to construct or acquire electrical energy transmission or distribution systems;

(d) sell electrical energy to a default supplier and to any municipal utility, cooperative utility, or investor-owned utility that serves Montana customers;

(e) contract with public or private entities for the operation and maintenance of state-owned power facilities; and

(f) encourage and support energy conservation to mitigate consumer costs and detrimental impacts on the environment."

Insert: "NEW SECTION. **Section 20. Definitions.** As used in [sections 18 through 25], unless the context requires otherwise, the following definitions apply:

(1) "Cost-based" means the price charged to a distribution services provider that is sufficient to meet the operating costs, including commodity costs, of the Montana power authority and to ensure timely repayment of bonds issued on behalf of or any other debt incurred by the Montana power authority.

(2) "Default supplier" means a distribution services provider.

(3) "Department" means the department of natural resources and conservation established in 2-15-3301.

(4) "Montana power authority" or "authority" means the citizen board established in [section 21]."

Insert: "NEW SECTION. **Section 21. Montana power authority--board composition -- procedures.** (1) There is a Montana power authority consisting of a seven-member citizen board appointed by the governor with the consent of the senate.

(2) In selecting the members, the governor shall:

(a) consider each prospective member's knowledge and understanding of the structural and financial dimensions of the electrical energy sector of the state's economy;

(b) ensure that two of the members broadly represent, as evidenced by their background, experience, and livelihood, the following categories of electrical energy consumption:

(i) irrigated agriculture;

(ii) commercial and industrial enterprise; and

(iii) residential;

(c) choose an at-large member with academic or business credentials that indicate that the person has substantial experience in energy markets in the region of the western states; and

(d) choose an at-large member with substantial experience in financial, banking, and bonding matters.

(3) The members shall elect the presiding officer by majority vote.

(4) Members of the Montana power authority shall serve staggered 4-year terms. The governor shall designate two of the initial members to serve 2-year terms and three of the initial members to serve 3-year terms. Vacancies must be filled by appointment for the unexpired term. A member may not serve more

than two consecutive terms.

(5) The Montana power authority shall meet at least twice a year and may meet more frequently as required by circumstances or at the request of any two or more members of the authority.

(6) Decisions of the Montana power authority require a simple majority of the whole membership.

(7) The Montana power authority is attached to the department for administrative purposes, and the department shall provide staff support and a liaison between the authority and other state or federal agencies."

Insert: "NEW SECTION. **Section 22. Powers and duties.** (1) The Montana power authority may:

(a) purchase electrical energy from any wholesale power supplier, on a contractual basis, without limitation on the duration of any contract, to meet the aggregated load requirements of consumers in the service territory of a distribution services provider in Montana;

(b) purchase, **construct, and operate** electrical generation facilities or electrical energy transmission or distribution systems in the state;

(c) enter into joint ventures with any municipality, a cooperative, an investor-owned utility, or any other public or licensed private entity in Montana for the purpose of financing the construction of an electrical generation facility or an electrical energy transmission or distribution system;

(d) request that the legislature authorize revenue bonds to be issued by the board of examiners for the purpose of:

(i) constructing electrical generation facilities or electrical energy transmission or distribution systems in the state; or

(ii) purchasing an electrical generation facility or an electrical energy transmission or distribution system; or

(e) sell electrical energy to any distribution services provider in the state;

(f) participate in a regional transmission organization established in response to or in compliance with an order of the federal energy regulatory commission; and

(g) participate with any municipality in an electrical energy generation project as provided in Title 90, chapter 5, part 1.

(2) The Montana power authority shall, subsequent to the purchase of electrical energy from the wholesale market or the generation of power from an in-state generation facility, offer cost-based electrical energy to Montana consumers, including to a default supplier and to any municipal utility, cooperative utility, or investor-owned utility in the state."

Insert: "NEW SECTION. **Section 23. Bond authorization.** (1) The board of examiners may issue and sell bonds of the state in an

aggregate principal amount not to exceed $500 million for the purposes authorized in [section 24]. The bonds are revenue obligations in which the net revenue from the sale of the electrical energy produced from the electrical generation facilities acquired or built pursuant to [section 24] or revenue from electrical energy transmission and distribution charges is pledged for payment of the principal and interest on the bonds. **The bonds may be publicly or privately sold, bear interest at rates and times and mature at times not exceeding 40 years from the date of issuance as the board shall determine. The Board o may issue the bonds pursuant to a resolution or and indenture of trust with a financial institution having the powers of a trust company. The resolution or indenture may contain provisions for protecting and enforcing the rights of bondholders as are reasonable and proper and not in violation of law, including covenants setting forth the duties of the state, the board of examiners, the authority , or agencies of the state in relations to the acquisition, construction, improvements, maintenance, operations, repair, and insurance of the project financed with the proceeds of the bonds and the custody and application of all money. The trust indenture may set forth the rights and remedies of the bondholders as it customary in trust indentures, deeds of trust and mortgages securing bonds.**

(2) The proceeds of the bonds, other than any premiums and accrued interest received, must be deposited in an account in the state special revenue fund. Premiums and accrued interest must be deposited in the debt service fund established in 17-2-102. Proceeds of bonds deposited in the account may be used to pay the costs of issuing the bonds and to fulfill the purposes authorized in [section 24]. For the purposes of 17-5-803 and 17-5-804, the account constitutes a capital projects account. The bond proceeds must be available to the Montana power authority and may be used for the purposes authorized in this section without further budgetary authorization.

(3) (a) In authorizing the sale and issuance of the bonds, the board of examiners, upon request of the Montana power authority, may create separate accounts or subaccounts to provide for the payment and security of the bonds, including a debt service reserve account. The net revenue from the sale of the electrical energy produced from the electrical generation facilities acquired pursuant to [section 24] must be pledged to these accounts.

(b) The electrical energy produced from the electrical generation facilities must be offered to in-state customers before the electrical energy may be offered to other customers."

Insert: "NEW SECTION. **Section 24. Use of bond proceeds.** The Montana power authority shall use the proceeds of the bonds authorized in [section 23] to purchase the electrical generation

facilities and associated water rights for those facilities, to build electrical energy generation facilities, to **design and** build new state-owned electrical energy transmission or distribution systems, **or to pay capitalized interest during construction, to fund a debt service reserve, and to pay costs associated with the sale and security of the bonds.** The Montana power authority may not acquire a facility or system that is associated with a superfund project."

Insert: "NEW SECTION. **Section 25. Interagency cooperation.** (1) State agencies shall cooperate with the Montana power authority in the planning of electrical energy purchases or the permitting or constructing of electrical generation facilities.

(2) Within the limits of available resources, state agencies shall provide scientific, economic, and other relevant data requested by the Montana power authority."

"NEW SECTION. **Section 26. Pledge and covenants. In accordance with consultations of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the state and the holders of the bonds issued by the state.**

Renumber: subsequent sections

3. Page 13, line 27.

Insert: "(2) [Sections 18 through 25] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 18 through 25]."

- END -

Ex 2

4-20-01

Amendments to House Bill No. 474
Reference Copy

For the House Free Conference Committee

Prepared by Gregory Petesch
April 20, 2001 (12:33PM)

1. Page 7, line 23.
Following: line 22
Insert: "(4) The commission shall establish procedures and terms under which customers may choose an electricity supplier other than the default supplier or may choose to again be served by the default supplier. The choice must be available for the period beginning July 1, 2002. The procedures must provide for an orderly process of choice during the transition period and provide conditions for leaving and returning to the default supplier. The procedures must take into account electricity supply contracts for supplying customers during the transition period. The procedures must provide for the recovery of costs associated with those customers who choose an alternative electricity supplier and who wish to return to the default supplier."

- END -

Ex. 3
4-20

Amendments to House Bill No. 474
Reference Copy

Requested by Senator Don Ryan

For the House Free Conference Committee

Prepared by Todd Everts
April 20, 2001 (11:20AM)

1. Page 8.
Following: line 8
Insert: "**Section 7.** Section 69-8-210, MCA, is amended to read:

"**69-8-210. Public utilities -- electricity supply.** (1) On the effective date of a commission order implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its generation assets from the rate base.

(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.

(3) If the transition period is extended, then the customers' distribution services provider shall:

(a) extend any cost-based contract with the distribution services provider's affiliate supplier for a term not more than 3 years; or

(b) purchase electricity from the market; and

(c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are fully recovered.

(4) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404.

(5) A public utility shall offer its customers an opportunity to purchase a separately marketed product composed of power from renewable resources. This product may be priced differently from the standard electricity product authorized in this section. For the purposes of this section, "renewable resources" means biomass, wind, solar, or geothermal resources."

{*Internal References to 69-8-210:*
*69-8-201*x*}"

- END -

Ex 4
4-20

Amendments to House Bill No. 474
Reference Copy

Requested by Senator Alvin Ellis

For the House Free Conference Committee

Prepared by Todd Everts
April 20, 2001 (1:04PM)

1. Title, page 1.
Following: line 21
Insert: "CLARIFYING THE DEFINITION OF "UNIVERSAL SYSTEM BENEFITS PROGRAMS" TO INCLUDE IRRIGATED AGRICULTURE; REVISING THE UNIVERSAL SYSTEM BENEFITS PROGRAMS FUNDING LEVEL TO INCLUDE IRRIGATED AGRICULTURE;"

2. Title, page 1, line 22.
Following: "SECTIONS"
Insert: "69-8-103,"
Following: "69-8-201"
Insert: ", 69-8-402, 69-8-412, 69-8-414,"

3. Page 6.
Following: line 24
Insert: **"Section 6.** Section 69-8-103, MCA, is amended to read:
"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:
(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases electric energy, and takes title to electric energy as an intermediary for sale to retail customers.
(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.
(3) "Board" means the board of investments created by 2-15-1808.
(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

(8) "Default supplier" means a distribution services provider or a person that has received a default supplier license from the commission.

(9) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

~~(10)~~ "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

(11) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(12) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(13) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and of acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

(14) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

(15) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the

commission, or a utility.

(16) "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

(17) "Local governing body" means a local board of trustees of a rural electric cooperative.

(18) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

(19) "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

(20) "Net metering system" means a facility for the production of electric energy that:

(a) uses as its fuel solar, wind, or hydropower;

(b) has a generating capacity of not more than 50 kilowatts;

(c) is located on the customer-generator's premises;

(d) operates in parallel with the distribution services provider's distribution facilities; and

(e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(21) "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's share of transition costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

(22) "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electricity supply for all residential and commercial customers.

(23) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(24) "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

(25) "Small customer" means a residential customer or a small commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts of a public utility distribution services provider that has opened access on its distribution system pursuant to Title 35, chapter 19, or this chapter.

(26) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that holder.

(27) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(28) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(29) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(30) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(31) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice of electricity supplier.

(32) "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed

transition period and into the future.

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives. Except as provided in subsection ~~(7)~~ (8), these universal system benefits charge rates must remain in effect until ~~July 1, 2003~~ December 31, 2005.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) Utilities must receive credit toward annual funding requirements for a utility's internal programs or activities that qualify as universal system benefits programs, including those portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, conservation and efficiency measures for irrigated agriculture, or low-income energy assistance, and for large customers' programs or activities as provided in subsection ~~(7)~~ (8). The department of revenue shall review claimed credits of the utilities and large customers pursuant to 69-8-414.

(c) A utility's distribution services provider at which the sale of power for final end use occurs is the utility that receives credit for the universal system benefits programs expenditure.

(d) A customer's distribution services provider shall collect universal system benefits funds less any allowable credits.

(e) For a utility to receive credit for low-income related expenditures and conservation and efficiency measures for irrigated agriculture, the activity must have taken place in Montana.

(f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund established in 69-8-412 for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs, conservation and efficiency measures for irrigated agriculture, and low-income energy assistance.

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness

transition amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

(33) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

(35) "Transmission services provider" means a person controlling or operating transmission facilities.

(35) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

(36) "Universal system benefits programs" means ~~public~~ purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) reducing energy costs of irrigated agriculture in Montana through conservation and efficiency measures;

~~(c)~~(d) renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;

~~(d)~~(e) research and development programs related to energy conservation and renewables;

~~(e)~~(f) market transformation designed to encourage competitive markets for public purpose programs; and

~~(f)~~(g) low-income energy assistance.

(37) "Utility" means any public utility or cooperative utility."

{*Internal References to 69-8-103:*
15-72-103x *15-72-104x* *35-19-102x* *69-3-1403x* }"

Renumber: subsequent sections

4. Page 8.

Following: line 8

Insert: "Section 8. Section 69-8-402, MCA, is amended to read:

"69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, energy conservation measures for irrigated agriculture, and low-income energy assistance during the

and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is ~~established~~ at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) (a) Except for those utilities that have not filed a transition plan, a utility's minimum annual funding requirement for reducing energy costs through conservation and efficiency measures for irrigated agriculture is established at 15% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(b) A utility must receive credit toward the utility's irrigated agriculture assistance annual funding requirement for the utility's internal irrigated agriculture assistance programs or activities.

(c) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal irrigated agriculture energy assistance fund established in 69-8-412.

~~(6)~~(7) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

~~(7)~~(8) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) $500,000, less the large customer credits provided for in this subsection ~~(7)~~ (8); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection ~~(7)~~ (8);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's

facility; and

(B) those portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that large customer's universal system benefits charges.

~~(8)~~ (9) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, the department of revenue, and the transition advisory committee provided for in 69-8-501. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the transition advisory committee. The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and to the transition advisory committee. The annual report of a public utility or of the statewide cooperative utility office must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

~~(9)~~ (10) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

~~(10)~~ (11) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection ~~(10)(b)~~ (11)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits

claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."
{*Internal References to 69-8-402:*
69-8-201x *69-8-201x* *69-8-311x* *69-8-412x*
69-8-414 x *69-8-414x* *69-8-501x* }"

Insert: "Section 9. Section 69-8-412, MCA, is amended to read:

"69-8-412. Funds established -- fund administrators designated -- purpose of funds -- department rulemaking authority to administer funds. (1) If, pursuant to 69-8-402(2)(f), ~~or~~ (5)(b), or (6)(c), there is any positive difference between credits and the annual funding requirement, the department of revenue shall establish one or ~~both~~ all of the following funds:

(a) a fund to provide for universal system benefits programs other than low-income energy assistance. The department of environmental quality shall administer this fund.

(b) a fund to provide universal low-income energy assistance. The department of public health and human services shall administer this fund.

(c) a fund to provide for reductions in the energy costs of irrigated agriculture through energy conservation and efficiency measures. The department of agriculture shall administer this fund.

(2) The purpose of these funds is to fund universal system benefits programs.

(3) The department of environmental quality and the department of public health and human services may adopt rules that administer and expend the money in each respective fund based on an annual statewide funding assessment that identifies funding needs in universal system benefits programs. The annual assessment must take into account existing utility and large customer universal system benefits programs expenditures."
{*Internal References to 69-8-412:*
69-8-402 *69-8-402* }"

Insert: "Section 10. Section 69-8-414, MCA, is amended to read:

"69-8-414. Universal system benefits programs credit review process. (1) All annual reports required pursuant to ~~69-8-402(8)~~ 69-8-402(9) and ~~(10)~~ (11) must be filed with the department of revenue on March 1 of each year.

(2) Except as provided in 69-8-413, upon a challenge by an interested person, the department of revenue shall ensure that the credit claimed is consistent with this chapter. An interested person may file comments challenging the claim, including supporting documentation, with the department of revenue. A challenge of any claimed credit must be filed within 60 days of the department of revenue's receipt of the credit claimant's annual reports required pursuant to ~~69-8-402(8)~~ 69-8-402(9) and ~~(10)~~ (11).

(3) Claimed credits are presumed to be correct unless challenged by an interested person. If a challenge is filed by an interested person, the department of revenue shall conduct an

initial review of a challenged credit and shall make a determination as to the likelihood that the challenged credit qualifies for universal system benefits programs. If the department of revenue finds that the challenged credit is not likely to qualify for universal system benefits programs, the department of revenue shall formally review the challenge; otherwise, the department of revenue shall dismiss the challenge and provide a statement of the reasons supporting dismissal of the challenge. The department of revenue may request additional information from the credit claimant or interested person. The department of revenue shall complete the initial review within 30 days of the challenge.

(4) If the department of revenue determines that a formal review of a challenged credit is necessary, the department of revenue shall provide public notice of the opportunity to comment to the credit claimant and interested persons. The department of revenue may also schedule an oral hearing. If a hearing is scheduled, the department of revenue shall provide public notice of the hearing to the credit claimant and interested persons.

(5) For a formal credit review challenge, the following procedures apply:

(a) The credit claimant shall provide documentation supporting the credit claimed to the department of revenue and to all interested persons, subject to department of revenue protective orders for confidential or sensitive materials, upon a showing of a privacy interest by the credit claimant.

(b) The department of revenue shall make all materials related to the claim, the challenge, and the submitted comments available to the credit claimant and for public inspection and photocopying, subject to any department of revenue protective orders.

(c) The credit claimant may respond in writing to any comments and other documents filed by an interested person.

(d) The department of revenue may ask for additional detailed information to implement this section.

(6) Upon completing a formal review of a challenged credit, the department of revenue shall make a decision to certify or to deny the credit claimed, providing a statement of the reasons supporting the department of revenue's decision. The formal review of a challenged credit, including the department of revenue's final decision, must be completed within 60 days of the department of revenue's public notice of the opportunity to comment on the challenged credit."

{*Internal References to 69-8-414:*
69-8-402x *69-8-413x* }"

Renumber: subsequent sections

- END -

Ex. 5

4-20-01

Amendments to House Bill No. 474
Reference Copy

Requested by Representative Douglas Mood

For the House Free Conference Committee

Prepared by Gregory Petesch
April 20, 2001 (11:51AM)

1. Page 2, line 4.
Insert: " (12)(a) "Electricity supply costs" means actual costs of the electricity. Actual costs include fuel, ancillary service costs, transmission costs including congestion and losses, and any other costs directly related to the purchase of electricity and management of electricity costs or a related service.

(b) Revenue from the sale of surplus electricity must be deducted from the costs included under subsection (12)(a). Total transmission costs are recoverable only once in electricity supply costs.

(c) The terms used in this subsection (12) must be construed according to industry standards."

2. Page 2, line 6.
Insert: "**Section 12.** Section 69-8-210, MCA, is amended to read:

"**69-8-210. Public utilities -- electricity supply.** (1) On the effective date of a commission order implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its generation assets from the rate base.

~~(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.~~

~~(3)~~(2) ~~If~~ During the transition period, ~~is extended, then~~ the customers' distribution services provider, acting as the default supplier, shall:

(a) beginning July 1, 2002, extend any cost-based contract with the distribution services provider's affiliate supplier for a term of not more than 3 years; or

(b) purchase electricity from the market; and

(c) use a mechanism that recovers electricity supply costs in rates ~~to ensure that those costs are fully recovered~~ as provided in subsection (4).

(3) (a) The default supplier shall provide for the full electricity supply requirements of all default supply customers. To meet these requirements, the default supplier shall procure a

portfolio of electricity supply using industry-accepted procurement practices, which may include negotiated contracts or competitive bidding. The commission may develop reasonable requirements for the use of competitive bidding in the procurement process.

(b) A default supplier may submit material related to proposed bids or contracts concerning electricity supply to the commission before the default supplier enters into the contract. The commission may comment on the material.

(c) In reviewing electricity supply contracts, the commission shall consider only those facts that were known or should reasonably have been known by the default supplier at the time the contract was entered into and that would have materially affected the cost or reliability of the electricity supply to be procured.

(4) (a) The commission shall use an electricity cost recovery mechanism that ensures that all electricity supply costs are fully recoverable in rates. The cost recovery mechanism must provide for prospective rate adjustments for cost differences resulting from cost changes, load changes, and the time value of money on the differences.

(b) The default supplier shall submit a proposed electricity supply cost recovery mechanism to the commission for approval on or before July 1, 2001. A mechanism must be adopted by the commission before March 30, 2002.

(c) The commission shall establish a method to provide for the full recovery of electricity supply costs that extend beyond the end of the transition period.

~~(4)~~ (5) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404."

{Internal References to 69-8-210: 69-8-201*x}""

- END -

Note: ... page missing from this report. Please contact the MT Historical Society Archives for full report (444-4775). 7/17/01

5-10

FREE CONFERENCE COMMITTEE

on House Bill 474

Report No. 1, April 20, 2001

Mr. Speaker and Mr. President:

We, your Free Conference Committee on **House Bill 474**, met April 20, 2001, and considered:

1. Senate Committee on Energy and Telecommunications amendments to third reading copy, dated April 9, 2001.

For the House:

Representative Mood, Vice-Chair

Representative Dell

Representative R. Brown

For the Senate:

Senator McNutt, Chair

Senator Ellis

Senator Ryan

Amendment Coordinator

Chief Clerk of the House

We recommend that **House Bill 474** (reference copy - salmon) be amended as follows:

1. Title, line 8.
Strike: "A LIMITED"
Insert: "AN"

ADOPT

REJECT

AC HB 474-1

891703FC.hdc

FCCR#1 HB 474

7. Page 5, line 21.
Following: line 20
Insert: "(2) "Montana industry" means a commercial enterprise located within Montana that would have consumed more than 5 megawatts of electrical energy on an average during the last 12 months if the enterprise had not closed due to electrical prices."
Renumber: subsequent subsection

8. Page 5, line 23.
Following: "15 U.S.C. 79Z-5A"
Insert: ", or as provided for in 16 U.S.C. 796(17)(A)"

9. Page 6, line 14.
Following: "SUPPLIER"
Insert: "or a Montana industry"

10. Page 6, line 16.
Following: "ASSIGNEE"
Insert: "or a Montana industry"

11. Page 6, line 18.
Following: "SUPPLIER"
Insert: "or a Montana industry"

12. Page 6, line 22.
Following: "INTEREST"
Insert: "or with a Montana industry"

13. Page 6, line 25.
Insert: "**Section 6.** Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-31-702; 15-34-115; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319;

commission, that acts as an agent or intermediary in the sale and purchase of ~~electric~~ electrical energy but that does not take title to ~~electric~~ electrical energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

(8) "Default supplier" means a customer's distribution services provider ~~or a person that has received a default supplier license from the commission~~.

(9) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(10) "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

(11) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(12) (a) "Electricity supply costs" means actual costs of the electricity. Actual costs include fuel, ancillary service costs, transmission costs including congestion and losses, and any other costs directly related to the purchase of electricity and management of electricity costs or a related service.

(b) Revenue from the sale of surplus electricity must be deducted from the costs included under subsection (12)(a). Total transmission costs are recoverable only once in electricity supply costs.

(c) The terms used in this subsection (12) must be construed according to industry standards.

~~(12)~~(13) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

~~(13)~~(14) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and of acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's

average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts of a public utility distribution services provider that has opened access on its distribution system pursuant to Title 35, chapter 19, or this chapter.

~~(26)~~(27) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that holder.

~~(27)~~(28) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

~~(28)~~(29) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

~~(29)~~(30) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

~~(30)~~(31) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

~~(31)~~(32) "Transition period" means the period beginning on July 1, 1998, and ending on July 1, ~~2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice of electricity supplier~~ 2007.

~~(32)~~(33) "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims,

customers and the opportunities in providing service to smaller customers; and

(d) experience in the broad range of technical and administrative support matters involved in designing and delivering unbundled retail services to smaller customers." {Internal References to 69-8-104: 69-8-201 x}"

Renumber: subsequent sections

14. Page 6, line 29.
Strike: "(6)"
Insert: "(4)"

15. Page 7, lines 5 through 8.
Following: "(2)" on line 5
Strike: remainder of line 5 through "(b)" on line 8

16. Page 7, line 11.
Strike: "(i)"
Insert: "(a)"
Renumber: subsequent subsections

17. Page 7, line 22.
Following: "."
Insert: "A distribution services provider has an ongoing regulated default supply obligation beyond the end of the transition period."

18. Page 7, line 23.
Following: line 22
Insert: "(4) The commission shall establish procedures and terms under which customers may choose an electricity supplier other than the default supplier or may choose to be served by the default supplier. The choice must be available for the period beginning July 1, 2002. The procedures must provide for an orderly process of choice during the transition period and provide conditions for leaving and returning to the default supplier. The procedures must take into account electricity supply contracts for supplying customers during the transition period. The procedures must provide for the recovery of costs associated with those customers who choose an alternative electricity supplier and who wish to return to the default supplier."
Renumber: subsequent subsections

19. Page 8, lines 4 through 8.
Strike: subsection (6) in its entirety

(b) A default supplier may submit material related to proposed bids or contracts concerning electricity supply to the commission before the default supplier enters into the contract. The commission may comment on the material.

(c) In reviewing electricity supply contracts, the commission shall consider only those facts that were known or should reasonably have been known by the default supplier at the time the contract was entered into and that would have materially affected the cost or reliability of the electricity supply to be procured.

(4) (a) The commission shall use an electricity cost recovery mechanism that ensures that all prudently incurred electricity supply costs are fully recoverable in rates. The cost recovery mechanism must provide for prospective rate adjustments for cost differences resulting from cost changes, load changes, and the time value of money on the differences.

(b) The default supplier shall submit a proposed electricity supply cost recovery mechanism to the commission for approval on or before July 1, 2001. A mechanism must be adopted by the commission before March 30, 2002.

(c) The commission shall establish a method to provide for the full recovery of electricity supply costs that extend beyond the end of the transition period.

~~(4)~~(5) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404.

(6) A public utility shall offer its customers an opportunity to purchase a separately marketed product composed of power from renewable resources. This product may be priced differently from the standard electricity product authorized in this section. For the purposes of this section, "renewable resources" means biomass, wind, solar, or geothermal resources."

{Internal References to 69-8-210:
69-8-201*x}""

Insert: "Section 13. Section 69-8-211, MCA, is amended to read:

"69-8-211. Public utilities -- transition costs and charges -- rate moratorium. (1) Subject to the provisions of this section, the commission shall allow recovery of the following categories of transition costs:

(a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown costs, for which the contract price of generation is above the market price for generation;

(b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan, including costs, expenses, and reasonable fees related to issuing of transition bonds;

(c) the unmitigable transition costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to 69-8-202(3); and

(d) other transition costs as may qualify for recovery under this section.

~~(a) From July 1, 1998, through June 30, 2000, public utilities may not charge rates higher than those rates in effect on July 1, 1998.~~

~~(b)~~ From from July 1, 2000, through June 30, 2002, ~~and~~ only for those customers subject to the provisions of 69-8-201(1)(b), During that period, public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. Beginning on July 1, 2000, public utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs.

(7) Excepted from the provisions of subsection ~~(6)~~ are:

(a) increased costs related to universal system benefits programs greater than those currently in rates, including the treatment of universal system benefits program costs as an expense;

(b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.

(c) subject to commission approval, an extraordinary event resulting in either:

(i) a 4% annual revenue requirement increase from July 1, 1998, through June 30, 2000; or

(ii) an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June 30, 2002;

(d) the increase or decrease in the annual state and local property tax expense that has occurred since May 2, 1997.

(8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.

(9) Public utilities shall apply savings resulting under 69-8-503 toward the rate moratorium pursuant to subsection (6).

(10) ~~During the 4-year transition period~~ Before July 1, 2002, public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings if electric earnings fall below 9.5% earned return on average equity. The public utility may include the flow through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits amortized under this subsection may not be reflected in operating income for ratemaking purposes.

(11) The commission shall issue the accounting orders necessary to align rate moratorium timing and requirements to actual transition bonds savings.""

Insert: Section 14. Section 69-8-402, MCA, is amended to read:

"69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and

low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal low-income energy assistance fund established in 69-8-412.

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

(7) (a) Except for those utilities that have not filed a transition plan, a utility's minimum annual funding requirement for reducing energy costs through conservation and efficiency measures for irrigated agriculture is established at 6% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(b) A utility must receive credit toward the utility's irrigated agriculture assistance annual funding requirement for the utility's internal irrigated agriculture assistance programs or activities.

(c) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the irrigated agriculture energy assistance fund established in 69-8-412.

~~(7)~~ (8) (a) A large customer:

(i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying load equal to the lesser of:

(A) $500,000, less the large customer credits provided for in this subsection ~~(7)~~ (8); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour purchases, less large customer credits with respect to that qualifying load provided for in this subsection ~~(7)~~ (8);

(ii) must receive credit toward that large customer's universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's facility; and

(B) those portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) Large customers making these expenditures must receive a credit against the large customer's universal system benefits charge, except that any of those amounts expended in a calendar year that exceed that large customer's universal system benefits

supply except as electricity supply may be procured as provided in this section:

(a) by one or more default suppliers for those customers not being served by a competitive supplier; or

(b) by the distribution function of a public utility for those customers that are not being served by a competitive electricity supplier as provided by commission rules. During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.

(2) The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.

(3) The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.

(4) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(5) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's transition plan.

(6) The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

(7) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

~~(8) The commission shall license default suppliers and enforce default licensing provisions pursuant to 69-8-416.~~

~~(9) The commission shall promulgate rules for the licensing of default suppliers on or before December 1, 1999.~~

(8) The commission shall establish electricity supply rates for individual customer classes, which may vary based on cost factors associated with classifications of service or customers and any other reasonable consideration. Collectively, the individual electricity supply rates must reflect the full level of electricity supply costs that the default supplier incurs on behalf of its customers.

~~(10)~~(9) Until the commission has determined that workable competition has developed for small customers, a default supplier's obligation to serve remains.

~~(11)~~(10) In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

~~(12)~~(11) This chapter does not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than

and provide a statement of the reasons supporting dismissal of the challenge. The department of revenue may request additional information from the credit claimant or interested person. The department of revenue shall complete the initial review within 30 days of the challenge.

(4) If the department of revenue determines that a formal review of a challenged credit is necessary, the department of revenue shall provide public notice of the opportunity to comment to the credit claimant and interested persons. The department of revenue may also schedule an oral hearing. If a hearing is scheduled, the department of revenue shall provide public notice of the hearing to the credit claimant and interested persons.

(5) For a formal credit review challenge, the following procedures apply:

(a) The credit claimant shall provide documentation supporting the credit claimed to the department of revenue and to all interested persons, subject to department of revenue protective orders for confidential or sensitive materials, upon a showing of a privacy interest by the credit claimant.

(b) The department of revenue shall make all materials related to the claim, the challenge, and the submitted comments available to the credit claimant and for public inspection and photocopying, subject to any department of revenue protective orders.

(c) The credit claimant may respond in writing to any comments and other documents filed by an interested person.

(d) The department of revenue may ask for additional detailed information to implement this section.

(6) Upon completing a formal review of a challenged credit, the department of revenue shall make a decision to certify or to deny the credit claimed, providing a statement of the reasons supporting the department of revenue's decision. The formal review of a challenged credit, including the department of revenue's final decision, must be completed within 60 days of the department of revenue's public notice of the opportunity to comment on the challenged credit.""

Renumber: subsequent sections

21. Page 13, line 18.
Insert: "NEW SECTION. **Section 18. Consumer electricity support program.** (1) There is a consumer electricity support program. The purpose of the program is to provide an affordable and reliable electricity supply to customers of the default supplier from July 1, 2002, until June 30, 2007. The consumer electricity support program consists of financial support or the assignment and subsequent disposition of electricity supply.

(2) There is a consumer electricity support account in the state special revenue fund. The account must be used for the deposit of any of the financial sources dedicated to the account. Distributions from the account must be in accordance with rules adopted by the department of administration for the program. Financial sources for funding the account may include:

(a) allocations from the state as provided by law; and

(b) other financial sources as identified in rules adopted

employment by 100 employees or more by existing employers who need a reasonable and stable supply of electrical energy;

(b) funding universal system benefits programs provided for in this chapter;

(c) providing low-interest loans for new transmission facilities or for improvements to existing transmission facilities;

(d) providing low-interest loans for the construction of new temporary or permanent electrical generation facilities and for the expansion of the net generation capacity of existing electrical generation facilities. The electrical generation facilities referred to in this subsection must have an electrical generation capacity of 60 megawatts or less.

(4) In adopting rules, the department of administration shall consult with the commission and the consumer counsel. The department may contract with the commission for the administration of portions of the program.

(5) The funds deposited in the account under this section but not expended for the purposes established in this section must be transferred to the general fund after the end of each biennium.

(6) The money in the state special revenue account is statutorily appropriated, as provided in 17-7-502, for the purposes of [section 18] and this section."

Insert: "NEW SECTION. **Section 20. Short title.** [Sections 20 through 28] may be cited as the "Montana Power Authority Act"."

Insert: "NEW SECTION. **Section 21. Purpose.** The legislature finds and declares that:

(1) the economic viability and security of the state of Montana is directly linked to reliable and affordable electrical energy;

(2) electrical energy has become a basic and irreplaceable necessity that impacts the public health, safety, and welfare of all Montana citizens;

(3) Montana's residential, agricultural, governmental, commercial, and industrial consumers of electrical energy are entitled to cost-based prices for electrical energy; and

(4) it is in the public interest that the Montana power authority have the ability to:

(a) purchase electrical energy from any supplier in the wholesale market for the purpose of providing reliable, cost-based power exclusively to Montana consumers;

(b) construct, acquire, or enter into joint ventures to construct or acquire electrical generation facilities that will provide cost-based power to consumers in Montana;

(c) construct, acquire, or enter into joint ventures to construct or acquire electrical energy transmission or distribution systems;

(d) sell electrical energy to a default supplier and to any municipal utility, cooperative utility, or investor-owned utility that serves Montana customers;

(e) contract with public or private entities for the operation and maintenance of state-owned power facilities; and

(f) encourage and support energy conservation to mitigate consumer costs and detrimental impacts on the environment."

Insert: "NEW SECTION. **Section 22. Definitions.** As used in

distribution services provider in Montana;

(b) purchase, construct, and operate electrical generation facilities or electrical energy transmission or distribution systems in the state;

(c) enter into joint ventures with any municipality, a cooperative, an investor-owned utility, or any other public or licensed private entity in Montana for the purpose of financing the construction of an electrical generation facility or an electrical energy transmission or distribution system;

(d) request that the legislature authorize revenue bonds to be issued by the board of examiners pursuant to Title 17, chapter 5, for the purpose of:

(i) constructing electrical generation facilities or electrical energy transmission or distribution systems in the state; or

(ii) purchasing an electrical generation facility or an electrical energy transmission or distribution system; or

(e) sell electrical energy to any distribution services provider in the state;

(f) participate in a regional transmission organization established in response to or in compliance with an order of the federal energy regulatory commission; and

(g) participate with any municipality in an electrical energy generation project as provided in Title 90, chapter 5, part 1. The bonds may be publicly or privately sold, bear interest at rates and times, and mature at times not exceeding 40 years from the date of issuance as the board shall determine. The board may issue the bonds pursuant to a resolution or indenture of trust with a financial institution having the powers of a trust company. The resolution or indenture may contain provisions for protecting and enforcing the rights of bondholders that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the state, the board of examiners, the authority, or agencies of the state in relation to the acquisition, construction, improvements, maintenance, operation, repair, and insurance of the project financed with the proceeds of the bonds and the custody and application of all money. The trust indenture may set forth the rights and remedies of the bondholders as is customary in trust indentures, deeds of trust, and mortgages securing bonds.

(2) The Montana power authority shall, subsequent to the purchase of electrical energy from the wholesale market or the generation of power from an in-state generation facility, offer cost-based electrical energy to Montana consumers, including to a default supplier and to any municipal utility, cooperative utility, or investor-owned utility in the state."

Insert: "NEW SECTION. **Section 25. Bond authorization.** (1) The board of examiners may issue and sell bonds of the state in an aggregate principal amount not to exceed $500 million for the purposes authorized in [section 26]. The bonds are revenue obligations in which the net revenue from the sale of the electrical energy produced from the electrical generation facilities acquired or built pursuant to [section 26] or revenue from electrical energy transmission and distribution charges is pledged for payment of the principal and interest on the bonds. The board may issue the bonds in accordance with the applicable

22. Page 13, line 24.
Following: "~~7~~"
Insert: "(1)"

23. Page 13, line 27.
Insert: "(2) [Sections 18 and 19] are intended to be codified as an integral part of Title 69, chapter 8, and the provisions of Title 69, chapter 8, apply to [sections 18 and 19].

(3) [Sections 20 through 28] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 20 through 28]."

24. Page 13, line 28.
Strike: "**date**"
Insert: "**dates**"
Following: "**date.**"
Strike: "[This act]"
Insert: "(1) Except as provided in subsection (2), [this act]"

25. Page 13, line 29.
Insert: "(2) [Sections 29 and 31 and this section] are effective on passage and approval."

- END -